Understanding Counterparty Anonymity
For CFTC-Regulated Swaps Transactions

The CFTC's final rule prohibiting post-trade name give-up for swaps executed, pre-arranged, or pre-negotiated anonymously on or pursuant to the rules of a swap execution facility ("SEF") and intended to be cleared became effective on Monday, July 5, 2021.

Under this rule, the CFTC prohibits a SEF from directly or indirectly (including through a third-party service provider) disclosing the identity of a counterparty to a swap that is (i) intended to be cleared, and (ii) executed, pre-arranged, or pre-negotiated anonymously on, or pursuant to the rules of, a SEF.

The TP ICAP SEFs, tpSEF Inc. and IGDL, have amended their rulebooks to implement the CFTC rule. These provisions are intended to implement the CFTC rule and prevent post-trade disclosure of counterparties for the applicable swaps.

The TP ICAP SEFs apply the CFTC's post-trade name give-up prohibition to all swaps subject to the SEF trade execution requirement ("Required Transactions") and all swaps intended to be cleared.

Q: Didn't this rule go into effect in November 2020?

Yes, the compliance date for swaps subject to the trade execution requirement, specifically, Required Transactions in interest rate swaps and credit default swaps, was November 1, 2020.

As of July 5, 2021, the CFTC rule applies to an expanded scope of swaps that includes both Required Transactions and "intended to be cleared" swaps.

Q: What are "intended to be cleared" swap?

"Intended to be cleared" swaps includes all swaps subject to the clearing and SEF trade execution requirement (Required Transactions), and swaps where, prior to execution, the SEF knows the swap is intended to be cleared and will be submitted to a derivatives clearing organization for clearing.

At this time, the TP ICAP SEFs treat certain interest rate and credit swaps as "intended to be cleared" swaps. FX, commodities, and equity swaps are not "intended to be cleared" swaps.

TP ICAP continues to engage with CFTC Division of Market Oversight and industry associations to obtain additional guidance about what interest rate and credit swaps will be subject to the CFTC rule.

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Q: What about package transactions?

The CFTC rule prohibiting post-trade name give-up does not apply to a package transaction that includes a component that is not a swap intended to be cleared.

A package transaction consists of two or more components executed between two or more counterparties where (i) execution of each component is contingent upon the execution of all other components and (ii) the components are quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

Q: What about non-MAT swaps?

Example: Participant A is a counterparty to a package transaction that contains a MAT swap and a non-MAT swap that is intended to be cleared. Participant B is Participant A's counterparty with respect to the MAT swap, and Participant C is Participant A's counterparty with respect to the non-MAT swap. Is post-trade name give-up permissible with respect to the non-MAT swap?

Between November 1, 2020 and July 5, 2021, post-trade name give-up between Participants A and C with respect to a non-MAT swap would be permissible only if there is no direct or indirect disclosure of the counterparties to the MAT swap. For example, Participants B and C are not directly or indirectly made aware that Participant A is a counterparty to the MAT swap; and Participants A and C are not directly or indirectly made aware that Participant B is a counterparty to the MAT swap. Beginning July 5, 2021, post-trade name give-up with respect to the non-MAT swap is also prohibited.

Q: What about non-MAT swaps that are voluntarily cleared?

With respect to a non-MAT swap that is voluntarily cleared, is post-trade name give-up prohibited if the SEF does not know at the time of execution whether the transaction will be (i) cleared through a clearinghouse, or (ii) settled bilaterally between the counterparties?

As stated in the final rule release, "to the extent a SEF's current systems do not indicate whether a swap is intended to be cleared . . . the SEF must make necessary adjustments to its systems and processes to ensure that it can determine whether a swap is intended to be cleared before permitting post-trade name give-up." 85 FR 44693, 44698 (July 24, 2020).

Q: What about Matching LEIs?

SEFs currently utilize functionalities and processes that reject an attempt by a branch of a bank to execute against the order of another branch of the same bank, by identifying a matching LEI on both sides of the transaction. May SEFs notify the parties as to the reason for the rejection of the trade, which may result in disclosure of the counterparty name of the affiliate branch?

In these circumstances, SEFs may notify the counterparties that the trade was rejected because the counterparty LEIs are the same.

Q: What if we identify a case of prohibited give-up of customer information?

Please inform compliance as soon as possible, in writing (email or Bloomberg).