

MEMO

TO: CFTC Staff
FROM: ISDA
DATE: July 5, 2017
RE: Proposal Amending CFTC Regulation §37.6

1. Updated Proposal

Proposed Revisions to Current §37.6(b) Swaps Submitted for Clearing

For a transaction executed on or pursuant to the rules of a swap execution facility that is required or intended to be cleared, the swap execution facility shall provide each counterparty to a transaction with a Trade Evidence. The Trade Evidence shall be provided by the swap execution facility to the counterparties upon execution of the transaction.

Note: We will also suggest that conforming changes be made to Part 23.501 clarifying that for trades covered by Part 37.6(b), counterparties have no obligation to issue a confirmation under Part 23.501 without any reliance on SEF rulebook provisions.¹

Add new § 37.6(c) Swaps Not Submitted for Clearing

For a transaction executed on or pursuant to the rules of a swap execution facility that is not required or intended to be cleared, the swap execution facility shall provide each counterparty, or its agent, as applicable, with a Trade Evidence which shall be provided upon execution of the transaction. The confirmation for the transaction shall be executed by the counterparties to the transaction pursuant to § 23.501 (1)-(3) provided however that such confirmation must incorporate the terms of the Trade Evidence.

Add new §37.6(d)(1) Definition of Trade Evidence

“Trade Evidence” shall mean a written communication provided by the swap execution facility to each counterparty to the trade executed on or pursuant to the rules of the swap execution facility that legally supersedes any previously negotiated agreement between the counterparties to a transaction for the terms contained in the Trade Evidence. Trade Evidence must contain: (i) the economic terms of the trade agreed to by the counterparties on the swap execution facility (or

¹ 17 C.F.R. § 23.501(a)(4) currently provides that if the swap is executed on a SEF, counterparties will be deemed compliant with 17 C.F.R. § 23.501(a)(1)-(3) as long as the SEF’s rulebook provides that a confirmation of all terms of the transaction shall take place at the same time as execution.

provided by the counterparties to the swap execution facility in case of a block trade, as defined in § 43.1); (ii) the legal entity identifier of each of the counterparties to the swap as required by § 45.6, including any agent, as applicable, unless the swap is executed anonymously; (iii) the unique product identifier as required by § 45.7 (when the Commission designates a unique product identifier and product classification system pursuant to § 45.7(b)); and (iv) the unique swap identifier issued by the swap execution facility for the transaction as required under § 45.5(a).

Add new §37.6(d)(2) Trade Evidence for Package Trades

In the case of package trades, the counterparties shall provide to the swap execution facility the economic terms of the trade, as described in § 37.6(d)(1)(i), with respect to the leg of the transaction that is not executed on the swap execution facility to the extent that there is a legal requirement, or the counterparties request, that the swap execution facility processes parts of the package which have not been executed on the swap execution facility.