

INFORMATION NOTICE

FROM: **BGC Derivative Markets, L.P.**
TO: **Introducing Brokers and Participants**
SUBJECT: **CFTC Post-Trade Name Give-up Rule**
CFTC: **CFTC § 37.9(d)**
BGC SEF RULE REFERENCE: **Rule 517**
DATE: **July 22, 2024**

Executive Summary

This Information Notice is being issued as a reminder to all Introducing Brokers and Participants of BGC Derivative Markets, L.P. (“BGC SEF”) based on recent inquiries the SEF has received regarding name give up for bilateral trades and the prohibition of post-trade name give up for any swap executed on a Swap Execution Facility (“SEF”) and intended to be cleared.

Specifically, the Commodity Futures Trading Commission (“CFTC” or “Commission”) issued the final rule on June 25, 2020, to prohibit post-trade name give-up for any swap executed, pre-arranged, or pre-negotiated anonymously on or pursuant to the rules of a SEF and intended to be cleared.

The rule had a two-phase implementation:

- Phase One – the compliance date for swaps subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act (“CEA”) was implemented on November 1, 2020. This included swaps which have been Made Available to Trade (i.e. “Required Transactions”)¹ on a SEF.
- Phase Two – the compliance date for swaps not subject to the trade execution requirement, “Permitted Transactions”, under section 2(h)(8) of the CEA, but intended to be cleared or mandatorily cleared was July 5, 2021.

The final rule provides an exception for package transactions that include a component transaction that is bilaterally settled and not intended to be cleared, (i.e. Treasury Securities hedge, Futures hedge, IRS hedge for interest rate option, CDX hedge for credit option, etc.). As such, post-trade name give-up for bilaterally settled, uncleared, non-MAT swaps is allowed.

The CFTC has posted FAQs regarding post-trade name give-up at the following link:
<https://www.cftc.gov/IndustryOversight/TradingOrganizations/PTNGUfaqs>

For ease of reference, BGC SEF Rule 517 has been attached as Appendix A and additional FAQs regarding post-trade name give-up have been posted at Appendix B.

Questions about this notice should be directed to:

- Jason Sayegh, BGC SEF Compliance Manager, at 212-610-2385 or by email at jason.sayegh@bgcg.com
- Michael Sulfaro, BGC SEF Chief Compliance Officer, at 212-610-2281 or by email at msulfaro@bgcg.com

¹ Required Transactions are transactions that have been approved or deemed certified by the Commodity Futures Trading Commission as made available to trade in accordance with section 2(h)(8) of the CEA and offered for trading by BGC SEF.

APPENDIX A

517. Post-Trade Anonymity.

(a) Pursuant to the Commission issuing final rule § 37.9(d), it is prohibited to disclose, directly or indirectly, including through a third-party service provider, the identity of a counterparty for swaps executed, pre-arranged or pre-negotiated anonymously on or pursuant to the rules of a SEF and intended to be cleared at the time of execution.

(b) Prohibition on post-trade name give-up shall not apply to components of a package transaction that are uncleared swaps or non-swap instruments. Examples include, but are not limited by, swaps executed with a US Treasury hedge cleared bilaterally between the counterparties, swaps executed as part of a hedge to an Interest Rate Option or Credit Option and swaps executed as part of a package with an uncleared swap.

(c) The compliance date for swaps subject to the trade execution requirement under section 2(h)(8) of the CEA is November 1, 2020. The compliance date for swaps not subject to the trade execution requirement under section 2(h)(8) of the CEA is July 5, 2021.

APPENDIX B

CFTC Post-Trade Name Give-Up (“PTNGU”) Rule – FAQs

1.0. Introduction to the PTNGU Rule

1.1. What does the PTNGU rule prohibit?

The PTNGU rule prohibits post-trade name give-up for swaps executed, pre-arranged or pre-negotiated on or pursuant to the rules of a SEF and intended to be cleared.

1.2. Does the PTNGU rule distinguish between a swap executed in a SEF or Introduced to a SEF?

If the swap is executed by a SEF it falls under the rule in either scenario, and must remain anonymous.

1.3. What is the meaning of “intended to be cleared”?

At the time of execution, if it is known that the counterparties intend to have a swap Centrally Cleared, the PTNGU rule will apply. Even if the SEF does not submit the transaction to the clearing house but it knows that the counterparties intend to submit the transaction to a clearinghouse post execution, “intend to clear” is satisfied and the rule is in scope.

1.4. If a swap is in scope of the rule, can the counterparty name be revealed to the buyer or seller?

The swap will be required to trade anonymously. The swap will be arranged and negotiated anonymously. It is prohibited to reveal the counterparty name for the life of the swap through the following mean (this list is not all-inclusive):

- Voice and electronic communication (ex. Bloomberg chats and email)
- UI disclosure (customer waterfall and trade notifications)
- Trade Confirmations
- End of day recap reports
- Brokerage receivable statements

1.5. What will be revealed to the buyer and seller in place of the counterparty name?

In most case Non-Disclose Legal Entity or NDLE will be replaced for counterparty names in SEF trade confirmations and Markitwire affirmations.

1.6. What are the Compliance Dates (Phase-in Dates) for the PTNGU rule?

- 11/1/20 – For swaps subject to the trade execution requirement (Required Transactions or MAT Swaps)
- 7/5/21 – For swaps not subject to the trade execution requirement (Permitted Transactions intended to be cleared)

1.7. What trade types/currencies are under the scope of the rule?

- IRS (Fixed-to-Floating), OIS, FRA, SBS, ZCI
- Any credit default swap on a broad based index, such as Markit CDX IG and HY, iTraxx Europe and Europe Crossover, Markit CDX EM
- Currencies: USD, GBP, EUR, CAD, MXN, BRL, CLP, COP, JPY, AUD, NZD, KRW, INR, CNY, HKD, ZAR, CZK, PLN, HUF, NOK, SEK, ILS and any others that are centrally clearable

2.0. Exceptions to the PTNGU Rule

2.1. Are there any exceptions or relief to the rule?

The final rule provides an exception for “package transactions” that include a “component transaction that is not a swap intended to be cleared”.

2.2. What is meant by a “Package Transaction”?

Any transaction which consists of two or more component transactions executed between two or more counterparties where: 1. execution of each component transaction is contingent upon the execution of all other component transactions, and 2. the component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

2.3. What are some of the examples of exceptions to the PTNGU rule?

- US\$ IRS which include a UST hedge component in which the UST is cleared bilaterally (BGC does not clear the UST as Principal) between the counterparties to the swap.
- IRS hedge to an uncleared IR swaption.
- Uncleared Inflation Swap traded as a basis with a cleared ZCI Swap.
- IRS vs futures.
- CDX hedge to an uncleared Credit Option.

****While there are exceptions that allow post trade name give up, as stated in this section, it should be noted that names cannot be passed before the trade is consummated.*

3.0. Situations that might arise

3.1. What happens if the buyer or seller instruct the broker to book a transaction under the scope of the rule as off-SEF to get the counterparty name and then change it to anonymous on SEF?

Because the counterparty names have already been revealed, booking the transaction on SEF will be an immediate violation. Either the transaction would be required to remain off-SEF, or the broker would need to go back to the market with the original orders and re-arrange/negotiate/strike the transaction with a different counterparty. Restriking with the same counterparties would result in a violation in the eyes of a regulator.

3.2. What happens if the buyer or seller agree to a trade for an uncleared swap, but at the PTNGU stage one counterparty cannot face the other counterparty due to credit issues?

If either counterparty cannot face the opposing counterparty due to credit issues, the trade is considered “void ab initio” and cannot be executed.

3.3. What happens if the buyer or seller agree to a trade for an uncleared swap, names are passed at the PTNGU stage, but the trade fails to settle bilaterally?

If either counterparty cannot bilaterally settle the transaction, the trade must be cancelled.