



Swap Execution Facilities: The Onboarding Process

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What is a SEF?

- **Swap Execution Facility**
 - Trading platform in which multiple participants have the ability to trade swaps by accepting bids and offers made by multiple participants in the platform (but that is not an exchange) — CEA 1a(50)
- **Mandatory SEF trading**
 - Any swap subject to mandatory clearing must be executed on an exchange or SEF, unless no exchange or SEF makes the swap “available to trade” — CEA 2(h)(8)

SEF Functionality

- **Order Book**

- All market participants can enter multiple bids and offers, observe bids and offers entered by other market participants, and transact on such bids and offers — CFTC Rule 37.3(a)(3)

- **RFQ System**

- Trading platform in which a market participant transmits a request for a quote to buy or sell a swap to three* or more market participants — CFTC Rule 37.9(a)(3)
- *Two are required until fall of 2014

Footnote 88

- **Multi to multi platforms are now required to register as SEFs**
- **Certain platforms offering products not subject to the trade execution mandate (i.e., NDFs and Forex) must now register as SEFs**
- **Some counterparties revert to voice trading for permitted transactions to avoid SEF onboarding issues**

Required v. Permitted Transactions

- **Required Transactions**

- If subject to the trade execution requirement, and not large blocks, then subject to Minimum Execution Methods
- Must be executed on a SEF or exchange and, if executed on a SEF, must be executed through Order Book or RFQ System

- **Permitted Transactions**

- Anything traded on a SEF that is not a Required Transaction; not subject to Minimum Execution Methods

Market Fragmentation

SEF Issued Documentation to Onboard

- **User agreements**
 - Smaller document, a few pages, binds to terms
- **Review of the rulebook**
 - Much larger document, mostly similar across venues with some key differences and distinctions
- **Other subscription documents**
- **Not negotiable and retroactively applicable**

Documentation Key Issues

- **Representations from your managed accounts and funds**
- **Policies and procedures**
 - Gifts
 - Tracking SDRs
 - Tracking rulebook and other regulatory changes
 - Trade errors

Bunched Orders

- **Order flow**
- **SEFs as a platform for post-trade allocation**
- **“Standby” or “Super FCM” agreement — all bespoke**
- **Issues related to liability and indemnities, among others**

Block Trades

- **No real-time reporting for off-facility for block trades**
- **Prohibition on aggregation of orders for different accounts**
- **But aggregation permitted if traded on a SEF**
- **Time limited no-action relief for aggregation prohibition for swaps not offered for trading on a SEF**

General Compliance Obligations

- **Notification obligations. Examples include:**
 - Immediate notification of a fine over a de minimis level
 - Suspension on any trading platforms
 - Any indictment of an employee
 - Any violation of a SEF rule
- **Position limits**
- **Recordkeeping**

General Risks

- **Use of data**
- **Supervision of traders/employees**
- **Limitations of liability**
- **Sharing of information**
- **Suspension**
- **Arbitration TRO/injunctions**
- **Emergency rules**
- **Void ab initio**

Business Considerations — Deciding Which SEF to Connect To

- **Asset class**
- **Liquidity concerns**
- **Timing**

Prerequisites to Going Live

- **Execution connectivity (value of an aggregator)**
- **Sponsored access consideration**
- **Allocations and a Super FCM or Standby FCM**
- **Internal access monitoring — list of authorized users**
- **Compliance training/updating manuals**
- **Policies and procedures**
- **Obtaining necessary consents from funds/accounts**

Current MAT Transactions

Upcoming MATs and Addressing Packaged Transactions

- **There are a number of pending MAT trades from Tradeweb, Market Axess and Bloomberg SEF**
- **The CFTC will hold a public roundtable on Feb. 12, 2014, from 9:00 am to 12:30 pm, to discuss the application of the trade execution requirement on “packaged transactions”**

Speaker Biographies



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Craig Stein is a partner in the New York office and co-head of the Structured Products & Derivatives Group. His practice focuses on swaps and other derivative products, including credit- and fund-linked derivatives, prime brokerage and customer trading agreements, and structured finance and asset-backed transactions. He represents issuers, underwriters and portfolio purchasers in public and private structured financings, including collateralized loan obligations (CLOs). Craig has been recognized in this area by the prestigious legal directory Chambers USA: America's Leading Lawyers for Business, which noted that satisfied clients praised him as "proactive and quick in responding" and stated: "He is known for his work in derivative products, representing issuers, underwriters and portfolio purchasers in CLOs. Peers find his work in structured products and derivatives impressive."

Craig is a member of the American Bar Association, the New York State Bar Association, the Loan Syndications and Trading Association, the International Swaps and Derivatives Association and the Structured Finance Industry Group. He is a much sought-after speaker for hedge fund industry conferences and webinars and the author of numerous articles on advanced financial products. He recently authored "CLOs: An Expanding Platform" for The International Comparative Legal Guide to Securitisation 2013 and "Collateralized Loan Obligations: What to Expect When You Are Expecting Your First CLO" for The Hedge Fund Journal. Craig earned his undergraduate degree, cum laude, from Colgate University in 1989 and his J.D., cum laude, from the University of Pennsylvania Law School in 1992.

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Kristin Boggiano is a special counsel in the New York office, where she advises private funds and other financial institutions on a broad range of trading related issues. She also assists clients with seed arrangements and fund formation. In addition, Kristin provides guidance to clients on a variety of regulatory, compliance, risk management and operational issues related to the implementation of the Dodd-Frank Act. Prior to joining SRZ, Kristin was with Merrill Lynch, where she was a member of the investment bank's global equity-linked products team.

Kristin is a frequent speaker at conferences and seminars on a variety of topics, including issues such as collateral, clearing, extraterritoriality, SEFs, counterparty credit risk, Form PF, Form PQR and recordkeeping and reporting obligations related to private investment funds. She is also an avid writer on industry-related topics and was recently quoted by Compliance Intelligence on CFTC documentation rules. Kristin is a founder of Women in Derivatives (a 1000+ person trade organization), a member of the International Swaps and Derivatives Association Inc., and active in the Asset Management Group of the Securities Industry and Financial Markets Association. She is also a member of the New York State Bar Association, New York City Bar Association, the American Bar Association and the Managed Funds Association. Kristin participates on a number of these organizations' committees and is active in industry-based initiatives through them. Kristin earned a J.D., with a concentration in finance and specialty coursework in derivatives, from Northeastern University School of Law, an M.B.A. from Northeastern University Graduate School of Business, and a B.A. from Sarah Lawrence College.