

SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional)

Date:

IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.

ORGANIZATION

FILING AS A: **DCM** **SEF** **DCO** **SDR** **ECM/SPDC**

TYPE OF FILING

• **Rules and Rule Amendments**

- Certification under § 40.6 (a) or § 41.24 (a)
- “Non-Material Agricultural Rule Change” under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Made Available To Trade Determination under § 40.5 or § 40.6
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

• **Products**

- Certification under § 40.2 (a) or § 41.23 (a)
- Submission under § 39.5
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

RULE NUMBERS

DESCRIPTION



November 26, 2013

BY ELECTRONIC MAIL (submissions@cftc.gov)

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Regulation 40.6(a) Rule Certification
GFI Swaps Exchange LLC Submission # 13-0005: Amendment of Rule 509(c)**

Dear Ms. Jurgens:

Pursuant to Section 5c(c) of the Commodity Exchange Act (the “Act”) and Section 40.6(a) of the regulations of the Commodity Futures Trading Commission (the “Commission”), GFI Swaps Exchange LLC (“GFI” or the “SEF”) hereby files the attached amendment to Rule 509(c). Capitalized terms that are used herein without definition have the meaning ascribed to those terms in the Rules of the SEF.

Rule 509(c), which is being amended in response to questions from Commission staff, permits a Broker to arrange a Permitted Transaction that is to be submitted to the SEF for execution on the Trading Platform pursuant to the Rules. As amended, the Rule requires that the terms of the Brokered Trade be acknowledged by the parties to the trade before it is submitted to the SEF and further provides that the trade will not be deemed to have been executed pursuant to the Rules, or to create a binding obligation between the parties thereto, until it is received, accepted and affirmed by the SEF.

The amendments to Rule 509(c) are consistent with swap execution facility Core Principle 2 and Commission Regulations 37.9(b) and 37.203. Rule 509(c) applies only to Permitted Transactions; the time delay requirements of Regulation 37.9(b), which apply only to Required Transactions, therefore are not relevant. Regulation 37.203 separately requires a swap execution facility to prohibit pre-arranged trading. The Commission has expressly stated, however, that this requirement does not apply to pre-execution communications between market participants that are effected in accordance with the rules of a swap execution facility. 78 Fed. Reg. 33476, 33510 (June 4, 2013). Commission staff nonetheless has asked GFI why the prohibitions on pre-arranged trading should not apply to Brokered Trades.

Pre-arranged trading is not explicitly prohibited by the Act or by Commission Regulations other than those cited above and, although not relevant here, Regulation 38.152 (the contract market counterpart to Regulation 37.203). While pre-arranged trading constitutes a form of “fictitious sale” prohibited by Section 4c(a) of the Commodity Exchange Act, *In re Gimbel*, Comm. Fut. L. Rep. (CCH) ¶24,213, at 35,003 (CFTC Apr. 14, 1988), *aff’d in part*, 872 F.2d 196 (7th Cir. 1989); *In re Harold Collins*, Comm. Fut. L. Rep. (CCH) ¶22,982, at 31,903 (CFTC Apr. 4, 1986), the Commission has made clear that the statutory prohibition is intended to address transactions that are “purportedly executed on an exchange which distort and/or mislead the commodity markets and their participants.” *In re Thomas Collins*, Comm. Fut. L. Rep. (CCH) ¶27,194, at 45,742 (CFTC Dec. 10, 1997), *quoting* S. Rep. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974).

These policy objectives are not relevant to Brokered Trades which, because they are Permitted Transactions that are not required to be effected openly and competitively in an order book or through a request for quote, do not “give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market.” *In re Credit Lyonnais Limited*, Comm. Fut. L. Rep. ¶30,125, at 57,470 (Aug. 24, 2005) (citations omitted). The public policy that is served by a ban on pre-arranged transactions, therefore, is simply not applicable to Brokered Transactions.

The text of amended Rule 509(c), with additions underlined and deletions interlineated, is attached hereto as Exhibit A.

GFI hereby certifies that: (i) the amendments to Rule 509(c) comply with the Act and the Commission’s Regulations thereunder; and (ii) a notice and copy of this submission is being concurrently posted on the SEF’s web site at <http://www.gfigroup.com/markets/swaps-exchange/rules-notice.aspx>. There were no substantive opposing views.

Please contact the undersigned at (212) 968-2982 or daniel.glatter@gfigroup.com if you have any questions or you would otherwise like to discuss this further.

Sincerely,

/s/ Daniel E. Glatter
Assistant General Counsel

cc: Marilee Dahlman

Attachment

509. Voice Execution; Brokered Trades

* * *

(c) A Broker may arrange a Permitted Transaction ~~off the Trading Platform~~ between two parties that is to ~~be executed~~ submitted to the Company for execution pursuant to the Rules (a “**Brokered Trade**”). The ~~Broker may, but is not required to be, be a party to such Brokered Trade, but each party must be a Participant, Sponsored Access Firm or Customer. terms of a~~ Brokered Trade Trades must be ~~reported~~ acknowledged by the parties to the trade before it is submitted to the Company by the Broker in a manner, ~~(and subject to the deadlines),~~ prescribed from time to time by the Company. A Brokered Trade will not be deemed to have been effected pursuant to the Rules, or to create a binding obligation between the parties thereto, until it is received, ~~and~~ accepted and affirmed by the Company. The Broker may, but is not required to be, be a party to such Brokered Trade, but each party must be a Participant, Sponsored Access Firm or Customer.