J.P.Morgan

March 8, 2011

Mr. David A. Stawick
Secretary
Commodity Futures
Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Commission Notice of Proposed Rulemaking on Core Principles and Other Requirements for Swap Execution Facilities dated January 7, 2011 (76 Federal Register 1214) (RIN Number 3038-AD 18)

J.P. Morgan ("JPM") welcomes the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") with respect to the Commission's Notice of Proposed Rulemaking relating to Core Principles and Other Requirements for Swap Execution Facilities (the "SEF Rulemaking"). The SEF Rulemaking is in connection with Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We agree with the public policy objectives underlying the SEF Provisions (as hereinafter defined) relating to Swap Execution Facilities and believe that much of the Rulemaking furthers the stated public policy objectives of Title VII. We do believe, however, that a number of the provisions in the Rulemaking are not in accord with the SEF Provisions, will unnecessarily restrict the activities of existing electronic trading platforms and will impair market liquidity. Any capitalized term not otherwise defined herein shall have the meaning assigned to that term in Title VII.

The SEF provisions.

Section 723 (a)(3) of Title VII requires that "transactions subject to the clearing requirement" of Title VII be executed on either on "a board of trade designated as a contract market" or "a swap execution facility". This "execution requirement" does not apply if no designated contract market or swap execution facility "makes the swap available to trade" or if certain enumerated exceptions to the execution requirement are applicable. A Swap Execution Facility ("SEF") is defined as a "trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility

or system, through any means of interstate commerce, including any trading facility." In addition to the foregoing, Section 733 of Title VII establishes certain "Core Principles for Swap Execution Facilities". All of the foregoing statutory provisions shall be referred to herein as the "SEF Provisions".

The public policy objectives of the SEF provisions.

The SEF execution requirement under Title VII is designed to promote the use of SEFs to accomplish two principal objectives: (i) provide for regulatory oversight of the execution of transactions and (ii) ensure that Swaps are subject to pre- and post-trade transparency through centralized reporting systems. In order for these objectives to be realized, however, Congress recognized that it is essential that the markets for Swaps traded on SEFs maintain adequate liquidity and that, in order to achieve this goal, each product market would need to be analyzed independently and that multiple forms of execution would need to be permitted. For these reasons, Title VII requires the Commission to make an independent assessment as to whether a Swap should be executed on a SEF, separate from its clearing determination with respect to the same Swap. In doing so, Congress clearly acknowledged the importance of developing liquid markets, and not just listed markets, in the Swaps traded on a SEF. Accordingly, the execution determination can only be made based on an assessment of the liquidity of the trading (as opposed to clearing) market for a Swap.

In addition, Title VII makes it clear that Swaps executed on a SEF are eligible for block trading exemptions, subject to size thresholds that reflect market liquidity and the needs of market participants. Further, with respect to those Swaps that are required to be executed on (and not merely reported as a block trade to) a SEF, the SEF Provisions recognize that its objectives may be realized through a variety of execution methods. For this reason, Congress provided the Commission and the SEFs with broad discretion to determine the manner in which transactions are executed and to vary the execution methodology for different categories of transactions. We believe that restricting the flexibility afforded to SEFs and market participants with respect to the manner of execution will undermine the realization of these Congressional objectives by preventing many market participants from entering into necessary transactions, thereby constraining liquidity in the markets, reducing competition and impairing transparency.

JPM has a number of specific comments on various aspects of the Rulemaking.

Customers should retain the choice to send RFQs to as many or as few participants as they wish. The proposed minimum of 5 participants is unnecessary and will increase customer execution costs.

We note that the Rulemaking requires SEFs to "provide that market participants transmit a request for quote to at least 5 potential counterparties in the trading system or platform". We believe this rule is totally unsupported by the statutory language of the SEF Provisions. The SEF Provisions merely require that the platform, seen as a whole, give participants the ***ability*** to interact with multiple participants; it says nothing about the number of participants that need to

be involved in a particular trade.[1] This was a conscious choice by Congress which wanted to ensure that SEFs would have the flexibility to design execution models that would, by adapting to the unique characteristics of the various different Swaps markets, maximize the proportion of trading that happens on SEFs. Thus, as a statutory matter, once a platform is multilateral in its structure (meaning that multiple participants are members of it and that customers can, if they so choose, request prices from multiple participants), it is clearly the case that such a platform qualifies as a SEF. Imposing an arbitrary requirement as to the number of market participants that must be contacted for quotes is inconsistent with the operating protocols of many existing electronic trading platforms, runs counter to the Congressional objective of providing SEFs with flexibility in determining their rules (so long as such rules are consistent with the Core Principles) and will impair market liquidity by restricting the ability of customers to make informed choices and increasing trading costs associated with dealing on the SEF.

Not only does this proposed rule find no basis in the statute, it also runs directly counter to emerging developments in international regulation. To fully appreciate the extent to which this is true, it is useful to discuss first single dealer platforms ("SDPs").

Both the Commission and the Securities Exchange Commission ("SEC") have concluded that an SDP cannot qualify as a SEF because it fails to satisfy the "multiple to multiple" language in Title VII. JPM agrees that, on balance, this is the right interpretation of the statutory language. Nonetheless, it is important to recognize that this interpretation creates some very arbitrary commercial results: contrary to perception, in the markets in which they are significant, SDPs contribute materially to competition, liquidity and price discovery.[2] As a result, the prohibition against single dealer platforms functioning as SEFs will undoubtedly result in less competition and higher costs for customers. Other regulators clearly agree: the recently published "Report on Trading of OTC Derivatives"[3], authored by a technical committee of the International Organization of Securities Commissions ("IOSCO") with global representation of market regulators (including representation from both the Commission and the SEC), reported significant disagreement among the participant regulators on whether the "multilateral" property of a SEF that Title VII requires is a necessary characteristic of a platform that contributes to the G20 objectives[4]. Reflecting the views of those participants who felt that the multilateral requirement is unnecessary, the study said:

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[1] It may be argued that the rule of construction stating that the purpose of the section is "to promote pre-trade price transparency" (CEA Section 5h (e)) requires the Commission to dictate particular methods of execution that it believes satisfy this requirement, and that the RFQ minimum of 5 is an example of this. This view is contradicted by the Commission's comment that "The Commission believes that indicative quotes are consistent with the statute's goal of achieving pre-trade price transparency." (76 FR 1220) and the fact that the SEC rule doesn't contain a similar requirement.

[2] A good example is the foreign exchange spot markets, where pricing is exceptionally competitive and transparent as a result of the interaction of various multilateral trading platforms, exchanges, and single dealer platforms. In most cases, those single dealer platforms allow their prices to be easily compared to the prices offered by other venues by means of either full trading APIs or simply allowing the prices to be "scraped" into other applications on the customer's desktop that facilitate comparison of prices across multiple platforms. In addition, to the extent that the dealer innovates in any way that allows it to improve the service to customers, it is likely to deliver that innovation first to the single dealer platform, since it can execute the innovation directly on that platform because it has control of the code.

[3] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD345.pdf

[4] http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf

"Other Task Force members believe that benefits [of an organized trading facility] can be realised where the opportunity to seek liquidity and trade with multiple liquidity providers is offered within a product market as a whole, irrespective of whether a particular platform offers access to multiple liquidity providers. These members noted that, in their view, the first seven characteristics set out above represent a significant strengthening over and above current rules in the majority of IOSCO jurisdictions for the trading of the relevant OTC derivatives. These members also noted that the benefits of centralisation may differ according to market structure, that a market consisting of a mix of single and multi-dealer platforms for standardised derivatives may also provide systemic risk benefits, and that the application of the additional characteristic (and the associated exclusion of single dealers as an element of the market structure for standardised derivatives) would involve costs along with their additional benefits."

The conclusions from this are striking: a significant portion of the agencies represented in the IOSCO working group disagreed with the unanimous conclusion of the US regulators on this point: in fact, it may well be the case that it was only because of the representation of the US regulators that the issue was even controversial, as opposed to resulting in an endorsement of SDPs. The existence of this disagreement in the international regulatory context highlights that the possibility of meaningful divergence in the implementation of the execution rules in different jurisdictions is much greater than has been generally acknowledged, especially once the process moves beyond high level sound bites and into the challenging task of low-level market structure design. In light of these international harmonization challenges, the requirement of a minimum of 5 participants in the RFQ, which is not even shared between the SEC and the CFTC, is especially concerning.

Setting aside temporarily questions of fidelity to the statute and international regulatory harmonization, it's also important to understand the practical commercial implications of this "minimum of 5" rule. Observing the typical behavior of OTC derivative customers in the current marketplace is illustrative in this regard. Today, customers have the freedom to use any mode of execution that they deem optimal. As a dealer, we observe customers who routinely auction their trades to 10 or more counterparties; we also observe customers who, through their access to indications and other pre-trade information from other dealers, reach an independent conclusion about what the best obtainable price is for a certain trade. Having reached this conclusion, they identify the dealer who is most likely to be able to offer the transaction at their desired price, and the customer enters into a bilateral, private negotiation with that dealer to obtain said price. By keeping the interest private, the customer minimizes the market impact of showing her interest to more than one participant, and thereby improves her chances of obtaining the target price. Many customers will use both of these styles of execution, as well as many variants in between, at different points in the market cycle and in different products. Not surprisingly, considering how liquidity varies among Swaps at any given point in time, and how even for a given product liquidity varies at different points in time, we see customers rationally optimizing the choices that are available to them to generate the best execution for their stakeholders. This optimization is performed by professionals employed by customers whose explicit job requirement is to minimize execution costs over the long term, many of whom have previous professional experience as dealers. To believe that the Commission's proposed minimum is going to be beneficial to liquidity requires believing that this community of professional execution cost minimizers who are employed by OTC derivative users is, collectively, either incompetent or in

some way conflicted such that they are consistently, and over long periods of time, failing to act in their own self-interest. That conclusion is simply not tenable.

Therefore, considering that this requirement is in no way required by the statute (as demonstrated by the absence of it in the SEC's Notice Of Proposed Rulemaking, which is based on the same language), and in light of the certainty that it will increase costs and deprive customers of a choice that they value today, we would suggest that this restriction is inconsistent with the spirit of avoiding unnecessary and burdensome rules that the President has recently articulated. The Commission should adopt the SEC's formulation and allow SEFs which satisfy the basic structural requirement that they are multilateral to design whatever execution protocols they believe will foster liquidity in compliance with the Core Principles.

The resting order functionality should not be mandatory

Unlike the RFQ minimum, the requirement that to qualify as a SEF a platform must also allow participants to leave resting orders on the system does not restrict customer choice; in fact, the requirement is designed to increase customer choice by encouraging the development of limit order book functionality. However, this should not blind us to the fact that this is a mandate that is being imposed on all present and future platforms that wish to become SEFs, and any such mandate involves a cost. Most of the platforms that engage in electronic trading of OTC derivatives do not currently support resting order functionality. And this functionality is more challenging and expensive to deploy than RFQ functionality because the pricing is more continuous and latency-sensitive, and therefore attracts more technology infrastructure cost.

Since this requirement is not in, nor does it follow from, the statute, cost-benefit analysis is particularly relevant. The question is, if such functionality has not emerged organically as a result of the demands of customers, in a landscape that allows for full competition among a variety of trading platforms and in which customers have the full flexibility to engage with any platform or dealer they wish, what sort of a "market failure" theory is the Commission proposing that creates the need to introduce this added cost? Initially, this requirement guarantees higher costs to customers, since it will increase the cost of developing and maintaining a qualifying platform. The Commission clearly believes that order book trading always leads to lower customer costs, and so must believe that the initial costs of this mandate are outweighed by the expected long term cost reductions that would result from the rule. This is a highly speculative theory on the part of the Commission, and one that is belied by the current organization of the OTC markets. In the meantime, the added immediate costs associated with the requirement are certain. We would propose instead that the Commission allow the SEF landscape to develop and, if it observes evidence of market failure in providing services that would clearly benefit customers, it should introduce a mandate to require SEF resting order functionality at that point.

Somewhat separately, we are concerned about the possibility of confusion arising from the requirement of "Taking into Account" Resting Quotes: Part A of the definition of "Request for Quote", Proposed Section 37.9(a)(ii)(A), requires that "Any bids or offers resting on the trading system or platform pertaining to the same instrument must be **taken into account** and communicated to the requester along with the responsive quotes." (emphasis added). The phrase

"taken into account" is not found in the Statute, and there is no explanation in the Rulemaking as to what this concept entails. Should the resting order requirement be retained in the final rule, we believe deleting this phrase would clarify the rule and provide necessary certainty to market participants without detracting from the overall objective. The resulting sentence would read: "Any bids or offers resting on the trading system or platform pertaining to the same instrument must be communicated to the requester along with the responsive quotes." Alternatively, we request a detailed explanation from the Commission in order to eliminate uncertainty regarding this important concept.

Similarly, we recommend revising Proposed Section 37.9(a)(ii)(B)(2)(ii) to read: "Transmitting a request for quote in accordance with Section 37.9(a)(ii)(A) based upon an indicative streaming quote; or …". This revision would eliminate the uncertainty about how resting quotes should be taken into account and communicated to the requester in a streaming quote environment and will clarify that the resting quotes have to pertain to the same instrument, which is missing in the existing language.

Nothing in the statute requires a SEF to be electronic

We note that throughout its commentary, the Commission assumes that SEFs will always be electronic platforms, and specifically states that voice trading is not permissible for non-block trades in instruments that have been made "available to trade"[5]. This is striking in light of Title VII's use of the phrase "means of interstate commerce" which is universally understood to allow voice trading. The Commission's limitation of voice trading only to block trades and trades exempt from the execution requirement appears to directly contradict the statutory language. The Commission may be taking the position that this limitation on voice trading is required in order to satisfy the Core Principles. If so, we respectfully disagree. The traditional voice broker model is essentially an open outcry pit except that the participants are not assembled in the same location and prices are communicated verbally rather than through hand signals. An order submitted by one trader is communicated by her broker to *all* other traders. In that sense, the traditional inter-dealer broker model creates pre-trade price transparency and, should such an enterprise register and submit to regulation (including the Impartial Access requirement), it would clearly satisfy the Core Principles. The Commission should be mindful of avoiding unnecessary and costly changes to existing market participants' business models if they are not required by the statute.

Delegate implementation of anti-abusive practices (such as the 15 seconds rule) to each SEF.

JPM recognizes the context from which the proposed 15 second rule emerges: the CEA prohibits manipulative trading practices, including pre-arranged trading. CEA Section 5h(f)(2)(B). As the Commission is aware, in many futures markets the practical reality that has emerged over the years is that in certain contracts (especially less liquid, more complex ones such as long-dated options) trading only happens after a "pre-execution conversation". The 15 second rule was

[5] 76 FR 1221: "For block trades, swaps not subject to clearing, and bespoke or illiquid swaps, the Commission interprets the statute's language ''by any means of interstate commerce'' to allow execution methods that may include voice"

developed by the exchanges in order to allow pre-execution conversations in certain products while complying with the core principle that prohibits pre-arranged trading.

We believe that the Commission's tradition of principles-based regulation is a sound one, and that this particular rule is an unnecessary deviation from that tradition. The Commission is rightly proud of the performance of the futures markets through the financial crisis. The effectiveness of the futures regulatory construct cannot be separated from the tradition of principles-based regulation and the extensive deference that the Commission has given to DCMs in ensuring compliance with the Core Principles. In light of the greater breadth and complexity of the Swaps markets that are newly under the Commission's oversight, a principles-based approach that defers to the specific platforms in each asset class is clearly preferable to the wholesale importation of a number of DCM rules into the Commission's own rule-writing process and the application thereof in an untested manner to a much larger and more complex set of products. With respect to pre-arranged trading, the prohibition against it is clear; and the new business conduct rules bind all Swap Dealers to compliance with the Core Principles. In light of all this, we believe that the specific mechanism by which a SEF ensures compliance with the prohibition against pre-arranged trading should be delegated to the SEF, so that the SEF can determine those trading protocols which most effectively allow it to monitor and enforce rules against manipulative trading practices.

The determination of block trade thresholds requires detailed expertise in particular markets and ongoing and dynamic input from market participants; the Commission should consider ways to supply flexibility to the market while providing appropriate oversight.

With respect to the use of the term "block trade" in the Rulemaking, Commission states that:

"a block trade is a swap of a large notional or principal amount that is transacted off exchange, pursuant to the rules of a SEF or DCM, and that is greater than the minimum block trade size set by the SEF or DCM. As proposed, a SEF or DCM must set the minimum block size for a particular swap contract at an amount greater than the appropriate minimum block size for the appropriate category of swap instrument in which such swap contract is categorized. See 75 FR 76140". [6]

JPM interprets this to mean that the block trade threshold that is determined as part of the post-trade transparency rulemaking (the "PTT Rule") functions as a floor for the block trade size that the SEF can use in its own trading protocols. JPM commented extensively on the definition of block trade as used in the PTT Rulemaking by letter dated January 12, 2011 (the "PTT Comment Letter") and we attach the PTT Comment Letter hereto and incorporate the PTT Comment Letter herein by reference (we refer you in particular to pages 5-11 of the PTT Comment Letter). The use of the PTT block size as a floor for SEF block sizes highlights how critical this variable will be in determining the future shape of the market.

In our PTT Comment Letter, we argued extensively that the block trade sizes that would result from applying the Commission's formula would be much too high, and we suggested an alternative formulation. We continue to believe that if the Commission promulgates a rule in

[6] 76 FR 1215, footnote 37.

which block trade sizes are determined centrally, then our proposed formula would represent a significant improvement over the one used in the proposed rule.

However, since that letter was written, the marketplace has had the benefit of seeing proposed rules by the SEC on SB SEFs, as well as the comment letters of other market participants. Collectively, these surface a tension between the vision in the PTT Rule, of a centrally determined block threshold, and an alternative vision in which the block size would be determined by the SEF in compliance with the Core Principles and certified to the Commission. Understandably, the Commission wants to ensure, *a priori*, that the block trade threshold doesn't serve as a loophole through which the market avoids the execution requirement. On the other hand, the Commission knows from experience that the setting of block trade thresholds is a highly technical matter which depends on the particular trading characteristics of the instrument or contract in question, and which may vary significantly over time and in different market environments. As such, the futures' market framework of having block sizes determined by the DCM and certified to the Commission is appealing.

One potential way of bridging this divide is to allow the definition of block size for PTT purposes to diverge from the block size definition for execution purposes by setting the PTT block size centrally but allowing SEFs to self-certify the execution block size. Of course, this would increase the burden associated with complying with the rule, but probably not to a very large extent; and the small increase in burden may be worthwhile in order to have a more flexible regulatory construct that can adapt more easily to changing market conditions and allow the Commission to more effectively leverage the expertise of market participants.

An alternative which draws on the SEC's proposed SEF rule is the creation of a "swap review committee" which would be charged with determining a block size for each product that would apply both the reporting and execution. Such a committee would be responsible for doing the technical analysis required to recommend to the Commission block thresholds which are optimal for fostering liquidity while complying with the Core Principles. Should such an approach be considered, we would strongly concur with the SEC's requirement that such a committee should have majority representation of the actual economic actors in the transactions: i.e. customers who consume liquidity and dealers who supply it. SDR and SEF representatives would also provide valuable input, but it's ultimately the customers and those who commit capital to supplying liquidity whose input is most critical. In light of the likely development of multiple SEFs within a given asset class, in order to avoid a proliferation of overlapping committees, we would recommend that an advisory group be established within each asset class under the auspices of the NFA, which would then propose rules to the Commission. Such a structure would allow the Commission to more effectively leverage the expertise of market participants and avoid unintended consequences resulting from exceedingly prescriptive and detailed rulemaking.

The Commission, not SEFs, should determine whether a Swap is "Available To Trade".

The statutory language of the SEF provisions provides that the SEF execution requirement does not apply if no SEF "makes the swap available to trade".

We believe that the phrase "available to trade" connotes a SEF that has created an actual trading market in which market participants actively quote two way prices, with market liquidity that can accommodate the needs of market participants. We do not believe that the "available to trade" test is satisfied by a SEF merely listing a Swap for which there is no liquidity and no trading activity. As a result, the listing of a Swap, standing alone, is insufficient to bring it within the execution requirement, unless the Commission has made a separate determination that liquidity is at a level that makes the Swap "available to trade." The phrase "available to trade," in JPM's view, can only be interpreted to mean that the SEF has taken steps to facilitate the development of an actual trading market with adequate liquidity to accommodate the needs of market participants.

The legislative history of Title VII makes it clear that this was the intended meaning of the phrase "available to trade." As Senator Blanche Lincoln, one of the principal drafters of the provision, noted in a colloquy included in the Congressional Record:

"In interpreting the phrase "makes the swap available to trade," it is intended that the Commission should take a practical rather than a formal or legalistic approach. Thus, in determining whether a swap execution facility" makes the swap available to trade," the Commission should evaluate not just whether the swap execution facility permits the swap to be traded on the facility, or identifies the swap as a candidate for trading on the facility, but also whether, as a practical matter, it is in fact possible to trade the swap on the facility. The Commission could consider, for example, whether there is a minimum amount of liquidity such that the swap can actually be traded on the facility. The mere "listing" of the swap by a swap execution facility, in and of itself, without a minimum amount of liquidity to make trading possible, should not be sufficient to trigger the Trade Execution Requirement."

We believe that the language of Proposed Rule Section 37.10 is inconsistent with the foregoing. In proposed Rule 37.10, it is stated that in conducting its annual review of whether a SEF has made a Swap available for trading, a SEF "may" consider a number of factors including the frequency of trading of and the open interest in the Swap being considered. We believe that the term "may" should be changed to "must"-we do not believe that SEFs, which have an economic incentive to list as many Swaps as possible, should have any discretion as to whether they should consider market liquidity as a factor in whether they have made a Swap available for trading. Additionally, considering that the determination that a Swap is "available for trading" results in a significant regulatory burden being imposed on the marketplace (since market participants will be forced to transact on a platform which will charge them fees they previously did not have to pay, and other platforms will be forced to treat a Swap as "available for trading" if any platform makes it available) we believe that the determination by a SEF that a Swap is "available for trading" should be submitted to the Commission and be made subject to public comment before being finalized.

Because of the complexity associated with the determination of whether a Swap is "available to trade", and its sensitivity to very detailed and dynamic characteristics of individual markets[7], it

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[7] For example, the evolution of liquidity over time. As in the Treasury market, many Swaps markets have a concept of "benchmark", "on-the-run" and "off-the-run". These concepts describe how the liquidity of an instrument may decrease materially as it "ages". We would imagine that certain benchmark swaps contracts would

may also be the case that an NFA-sponsored committee could serve as a useful bridge between market participants and the Commission. Such a committee would also help to address anti-competitive aspects of the requirement that if one SEF makes a swap available to trade, that determination applies to the whole market[8]. However, once again, it's critical that the composition of such a committee reflect that totality of the market, including customers and dealers. Deferring to the SEF for these decisions will create a significant conflict of interest between the economic interests of the SEF operator and the desire of customers to access as much liquidity as possible.

The applicability of the execution requirement must take into account whether the swap is executed as part of a package

As is the case in futures markets, there are many circumstances under which customers wish to transact a package of financial instruments, some of which, if traded on a standalone basis, might be subject to the execution requirement. Generally this is because customers want to execute all the legs at one price or spread and separating the parts of the package exposes the customer to adverse price movements. Examples of this include: options vs. swaps where options are not subject to the execution requirement and the delta hedge is; a package of a security and a swap which hedges it; an off-the-run, illiquid swap with a delta-neutral amount of the on-the-run benchmark swap; and other variations. Also, and importantly for financial end-users who cannot benefit from the end-user exemption to the SEF requirement, a very common issuance strategy is where the issuer communicates an all-in funding level which includes the bundled issuance of a bond only at a certain all-in target including a swap and an option if the debt is callable. In these situations, the financial contract that the parties are entering into is based on a negotiation of the spread, or price difference, between the instruments. If one of the legs of the contract is subject to the execution requirement but the other leg is not, or if there is not a liquid market on a SEF for the package in question, the application of the execution requirement to only one leg of the package would be impractical, costlier to the customer and disruptive to the marketplace. This challenge is familiar to the Commission from the futures markets, which have evolved the EFRP framework to address it. The Commission should ensure that the final SEF Rulemaking makes clear that EFRP-type transactions will be permissible in the Swap markets as long as they comply with the Core Principles and consider the distinct characteristics of the Swaps market such as swapped debt issuance which may not have been contemplated within the DCM EFRP framework.

The Commentary associated with the impartial access rule should be clarified to avoid disrupting existing business models which are permissible under the plain language of the statute

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tend to be "available for trading" as long as they remain benchmarks, but will cease having sufficient "on-SEF" liquidity when they roll into "off-the-run" status. This determination is obviously complex and dynamic.

[8] Since liquidity tends to be somewhat "sticky", if one platform has a viable offering which then triggers a mandate that applies to the whole market, liquidity will tend to concentrate on that "first mover" platform, which will raise barriers to entry for its competitors.

JPM supports the draft Rule implementing the Impartial Access requirement. However, we have significant concerns about the Commission's interpretation of the rule in commentary supplied with its release. The Commission states that, "Access to a SEF should be determined, for example, on the SEF's impartial evaluation of an applicant's disciplinary history and financial and operational soundness against objective, pre-established criteria."[9] What would follow from this interpretation is that a SEF which had membership rules stating that members must be registered Swap Dealers would not be permissible. This is problematic for a number of reasons: first, as noted by the SEC, there are many valid reasons, including reasons related to systemic risk, why such a SEF might adopt such a rule.[10] Second, neither the statute nor the rule itself supports the conclusion the Commission draws in the commentary. In light of the existence of a large community of inter-dealer brokers whose business model is intimately tied to the idea of serving as an intermediary to wholesale liquidity providers, we feel it is incumbent on the Commission to avoid the potential for significant disruption to the market as a result of commentary which is inconsistent with both the statute and the rule. We would therefore suggest that the Commission clarify that any objective non-discriminatory criteria for membership are acceptable, and monitor the landscape as it develops to ensure compliance with the Core Principles.

Answers to specific questions set forth in the Rulemaking.

Would the SEF provisions in the Dodd-Frank Act support a requirement that swaps that meet a certain level of trading activity be limited to trading through order books? If so, what level of trading activity would be the appropriate level at which to mandate trading exclusively on an order book? Should any such analysis be done on a product or asset class basis?

We believe that the imposition of a requirement that swaps that 'meet a certain level of trading activity" (presumably highly liquid swaps) be limited to trading through order books is not supported by the statutory language of the SEF Provisions and would frustrate the public policy objectives that underlie the SEF Provisions. Taking the most liquid swaps off of conventional SEFs would artificially constrain the development of SEFs, fragment the market and adversely impact market liquidity.

Conclusion.

We believe that the Rulemaking is an important first step in appropriately defining the characteristics and operation of Swap Execution Facilities. As noted, however, we believe that a number of changes to the Rulemaking are necessary to conform them to the statutory language set forth in the SEF Provisions and prevent them from unnecessarily reducing market liquidity and impairing the efficiency and operation of U.S. financial markets.

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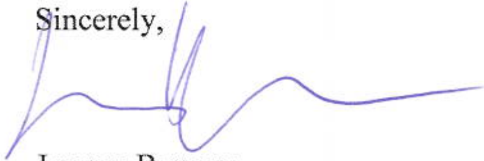
[9] 76 FR 1223

[10] "The Commission does not believe that the requirement for impartial access to a SB SEF under Core Principle 2 means that it must allow unfettered access to any and all persons. Rather, the requirements of Core Principle 6 that SB SEFs ensure the financial integrity of transactions on their markets, particularly with respect to the mandatory clearing requirement, permit SB SEF to have minimum standards for access to their markets, though such access must be provided on an impartial basis." 76 FR 10961.

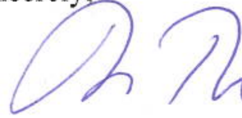
Thank you for the opportunity to comment publicly on these important matters.

Sincerely,



Jeremy Barnum
Managing Director
J.P. Morgan

Sincerely,



Don Thompson
Managing Director and
Associate General Counsel
J.P. Morgan

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