

March 8, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Core Principles and Other Requirements for Swap Execution Facilities – RIN 3038-AD18

Dear Mr. Stawick:

Markit¹ is pleased to submit the following comments to the Commodity Futures Trading Commission (“**CFTC**” or the “**Commission**”) on the proposed rulemaking to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**DFA**”)² titled Core Principles and Other Requirements for Swap Execution Facilities (the “**Proposed Rule**”).³

1. Introduction.

Markit provides independent data, valuations and related services for swaps and security-based swaps across many regions and asset classes in order to reduce risk and improve operational efficiency in these markets. As a service and infrastructure provider to the global swaps markets, Markit supports the Commission’s objectives of increasing efficiency in the OTC derivatives markets and of reducing both systemic and counterparty risk.

2. Executive Summary.

Markit believes that: (1) the determination that a swap is made “available for trading” should be based on numerous price and nonprice factors, should be made individually for each product and with respect to maturity levels of various types of swaps, should be made frequently, and should be performed on an aggregate basis; (2) the Commission should have the final authority in approving what contracts should be made “available for trading” on SEFs and on designated contracts markets (“**DCMs**”), and in making this approval the Commission should follow the similar process established under the DFA for Commission determination of what swaps should be required to be cleared.

3. The Determination That a Swap is “Available for Trading” Should be Based on Numerous Factors and Should Be Dynamic.

The Proposed Rule would require SEFs to conduct an annual assessment to determine whether a swap is “available for trading”.⁴ The rule states that a SEF “may” consider the frequency of transactions and its open interest, and any additional factors requested by the Commission. The Commission requests comments on whether SEFs should also consider the number of market participants trading a particular swap, whether a minimum number of participants should be required, and whether other factors should be taken into account.⁵

¹ Markit is a financial information services company with over 2,000 employees in North America, Europe and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

³ Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1214 (proposed Jan. 7, 2011).

⁴ See Proposed Rule, 76 Fed. Reg. at 1241 (to be codified at 17 C.F.R. § 37.10).

⁵ See *id.* at 1222.

(a) Liquidity Factors

We believe that the determination of whether a swap is “available for trading” is similar to the measurement of its liquidity. We also believe that a determination that an instrument is “available for trading” when significant liquidity is not truly present can actually serve to reduce or eliminate liquidity in that swap.

As a provider of Liquidity Scores⁶ for a variety of products, we have considerable experience making these types of liquidity determinations. We have found that it is difficult to measure liquidity for products such as swaps that trade mainly over-the-counter. As most individual swap instruments trade only infrequently, the traditional approach of using only observed trading volumes to gauge liquidity fails to produce meaningful results.

Measurement of liquidity for swaps should involve the compilation of multiple inputs and can be complicated. However, reasonably accurate gauges of liquidity can be derived from a combination of observable factors such as trade frequency and average transaction size, while its accuracy can be significantly increased through the inclusion of factors such as bid/offer spreads, the agreement on the price, the number of market makers, and others. We urge the Commission to require any entities making a determination that a swap is “available for trading” to take all of these relevant factors into consideration. As discussed below, we also do not believe that it is appropriate to allow any one SEF to make this determination alone without Commission oversight.

(b) Differentiation between Maturities

We believe that a determination that a given type of swap is “available for trading” should be required not only for each type of swap, but for different maturity levels of that type of swap. For example, the liquidity of the “benchmark” maturity of a swap can be significantly different than other maturities of the same product.⁷ We are concerned that, for example, if a determination is made that “standard” EUR/USD interest rate swaps are made “available for trading” because the 5 year maturity is highly liquid and common, all maturities of EUR/USD interest rate swaps will be deemed “available for trading”.

Liquidity for shorter maturities, however, might be sparse, and liquidity for longer maturities will only exist up to a certain maturity. Declaring all maturities “available for trading” would compromise efforts to develop a market for less liquid maturities within a product that is already determined to be “available for trading” based on more liquid maturities. We urge the Commission to limit any decisions that swaps are “available for trading” to specified maturity buckets or to use certain maturity cut-off points.

(c) Frequency of Determination

We also recommend that the Commission require determinations that swaps are “available for trading” to be conducted frequently in order to ensure that execution requirements closely track market developments and events. Liquidity of swaps can experience significant changes over time and can dry up completely in some circumstances. Therefore, we believe that these decisions (i) should be made more frequently than annually, (ii) should be revisited and reconsidered at the same frequency, and (iii) should also be revisited on an *ad hoc* basis in periods of volatility.

⁶ Markit provides liquidity measures, based on a number of relevant inputs, for a variety of swaps, bonds, loans, and structured finance instruments.

⁷ An extreme example of this issue that applies to every single swap is the fact that any swap, no matter how actively traded, will only ever be liquid or “available for trading” out to a certain maturity, *i.e.*, will not see any activity beyond a maturity of x years.

(d) Scope of the Market – Determination in the Aggregate

Finally, we do not believe that requiring SEFs individually to perform an “available for trading” analysis will lead to the right decisions.⁸ For example, a swap might be traded on a number of different SEFs with a small number of participants trading on each one of them. While trading activity might represent sufficient liquidity on an aggregate level, this might not be reflected in the analysis performed by individual SEFs. We therefore request the Commission to clarify how determination by individual SEFs can deal with common situations where a swap seems to be “available for trading” on one SEF, but not on the others, or where it is made “available for trading” on an aggregate level, but not on the level of individual SEFs. We believe that the best way to approach the “available for trading” decision is for the Commission to perform an analysis on an aggregate level that takes additional factors into account, and then decide based on the data specific to this swap.

4. The Commission Should Be Making the Ultimate Decision of What Swaps Should be “Made Available for Trading”.

The DFA states that “The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e) [*i.e.*, promotion of trading of swaps on SEFs and pre-trade price transparency].”⁹

Given our discussion above and given that the DFA provides detailed procedures for the Commission to follow in determining what contracts should be required to be cleared (and therefore traded on a SEF or a DCM),¹⁰ we believe that similar procedures should be adopted by the Commission in connection with the determination of “available for trading” – *i.e.*: (1) the swaps that are currently traded on SEFs should be deemed submitted to the Commission for designation approval; (2) the Commission may make its own determination; and (3) the SEF should make submissions of swaps to be designated for “made available for trading” to the Commission. If such submission is made, (a) the Commission shall review such SEF’s submission, taking into account the price and nonprice requirements of the counterparties (*e.g.*, liquidity in the market and other factors outlined above in this Letter); and (b) provide at least a 30-day public comment period regarding its determination as to whether the swap should be designated by the SEF as “made available for trading”.

We believe that this procedure shall ensure an orderly and consistent application of designation principles and will take into account all relevant factors for various types of swaps.

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⁸ Proposed Rule 37.10(c)(1) states that “If at least one swap execution facility has made the same or an economically equivalent swap available for trading, all swap execution facilities are required to treat the swap as made available for trading.”

⁹ DFA Section 733, amending the Commodity Exchange Act (“CEA”) Section 5h(d)(1).

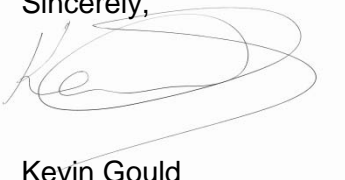
¹⁰ See DFA Section 723, amending CEA Section 2(h), which provides that: (1) those contracts that are cleared on the date of the effectiveness of the DFA, should be deemed submitted to the Commission for determination as required to be cleared; (2) the Commission may initiate its own review or a contract as required to be cleared; and (3) the Commission may make this determination upon the submission by the derivatives clearing organization.

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We appreciate the opportunity to provide these comments on this proposed regulation.

We thank the Commission for considering our comments. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Gould", written over a light gray rectangular background.

Kevin Gould
President
Markit North America, Inc.