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March 8, 2011

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

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

Dear Mr. Stawick:

The Commodity Futures Trading Commission ("CFTC") has requested public comment on proposed rules implementing Core Principles and other requirements for Swap Execution Facilities ("SEFs") under the Commodity Exchange Act as amended by Dodd-Frank. *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1,214 (Jan. 7, 2011) (the "Proposed Rules"). The CFTC faces a difficult challenge formulating appropriate and workable SEF rules that will promote swap trading on organized, regulated platforms, one of the key reform objectives of Dodd-Frank.

MarketAxess Corporation ("MarketAxess") operates a leading electronic trading platform for investment industry professionals that promotes transparency, price discovery, and liquidity in the corporate bond and other markets, including credit default swaps ("CDS").[1] MarketAxess' current operations are consistent with the CFTC's proposals for trading protocols, price transparency, audit trails, independence[2] and financial resources. We are ideally suited to achieve Dodd-Frank's objectives for SEFs and intend to begin operations as a SEF as soon as possible. We therefore have an acute interest in, and appreciate the opportunity to submit detailed public comment on, the CFTC's SEF proposals.

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1 MarketAxess Corporation is the principal operating subsidiary of MarketAxess Holdings Inc., a public company. We are regulated as a broker-dealer and as an alternative trading system ("ATS") operator by the U.S. Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"). Our principal offices are located in New York City, and we currently employ approximately 227 persons.

2 Although initially a dealer-owned entity, MarketAxess Holdings Inc. is now a public company, with no dealer(s) owning, individually or in the aggregate, more than 20% of MarketAxess' common stock. In addition, MarketAxess' 12-person Board of Directors includes nine individuals who meet the requirements for independence under the rules of the Nasdaq Stock Market.

The CFTC's proposals underscore the importance of SEFs to accomplishing Dodd-Frank's goals. While some swaps may eventually be traded on traditional exchange platforms, SEFs are the new venues where most swap trading is expected to migrate from today's voice broker-dominated market structure. Congress understood that most swaps are used for legitimate risk transfer by commercial and financial enterprises. Enhanced SEF swap trading should therefore decrease the cost of capital and stimulate economic growth. A thriving SEF business model in the United States would contribute materially to achieving the national economic policy objectives embedded in Dodd-Frank.

Against that backdrop, MarketAxess agrees with and supports many aspects of the CFTC's proposals. We also will suggest some areas for improvement based on our experience operating a successful electronic trading platform. Our primary concern is that some aspects of the CFTC's proposals may inadvertently undercut the viability of the SEF business model.

Today, organized, regulated trading platforms range from electronic Request for Quotation ("RFQ") platforms operated by registered broker-dealers such as MarketAxess to Central Limit Order Books on traditional exchanges such as designated contract markets ("DCMs") or national securities exchanges. The CFTC's proposals appear to be intended to place SEFs near the exchange markets on the spectrum of regulated trading platforms. By imposing on SEFs rigid, exchange-like, self-regulatory obligations for auditing, infrastructure and discipline, among others, the CFTC would erect unwarranted and formidable barriers to entry for SEFs. The result of these barriers would be that viable SEFs would be operated only by existing exchanges that have a self-regulatory system already in place or deep-pocketed entities that have the financial resources necessary to develop and operate such a system and to provide that level of self-regulatory organization ("SRO") infrastructure and staffing.

These barriers to entry for SEFs are quite real, particularly given the fact that, in comparison to other markets, including the futures markets, trading activity in OTC derivatives at least in its early phases is likely to be modest at best. For example, current CDS trading is relatively miniscule when compared to the many millions of transactions executed daily in U.S. futures markets. Recent Depository Trust and Clearing Corporation data indicate that only approximately 6,000 transactions are executed per day in credit default swaps across all regions, market segments (dealer-to-dealer and client-to-dealer), and products (indexes, tranches, single names). Given this comparatively meager trading, if SEF regulatory costs are too high, very few SEFs will be successful, or even created, and the market will suffer from a lack of innovation and competition, exactly the opposite of what Congress intended in Dodd-Frank.

We therefore strongly urge the CFTC to consider whether its proposals can be streamlined in some areas to adopt more of an ATS-type regulatory model, which the SEC has used for many years to enhance competition among trading platforms in many securities markets. (We also will urge the SEC similarly to reconsider the thrust of its security-based swap execution facility proposals.) Specifically, Regulation ATS has provided a flexible and cost-effective framework by allowing an SRO separate from the trading platform to perform the self-regulatory duties. We believe strongly that a similar model is appropriate for SEFs, which are expected to experience similar episodic trading and limited execution fees.

MarketAxess appreciates that the CFTC is attempting to strike the right regulatory balance while promoting the congressional goal of robust SEF trading. International competition should also be an important element of the CFTC's formula for successful SEFs. The majority of swap transactions are conducted by global dealers, banks, hedge funds, and investment managers. These global institutions may, with relative ease, shift trading capital to non-U.S. trading platforms that offer a more hospitable regulatory environment for trade execution. That result would thwart the purpose of Dodd-Frank and should be avoided if at all possible.

Following our executive summary, our comments will begin with a statement of our background and experience (as the CFTC may be unfamiliar with our operations and history) as well as a synopsis of the statutory framework for SEFs and the CFTC's proposal. We then will address five basic areas:

1. Broad and Effective Delegation of SEF Self-Regulatory Functions (pages 14-15);

2. Effective Temporary SEF Registration (pages 15-20);

3. Passport SEF Registration among CFTC SEFs and SEC Security Based Swap Execution Facilities ("SB SEFs") (pages 20-21);

4. Specific Refinements to the CFTC's Proposal to Promote SEF Trading (pages 22-29); and

5. Clarifications and Technical Comments on the CFTC's Proposal, as drafted (pages 29-40).

EXECUTIVE SUMMARY

Customer service is MarketAxess' cornerstone. We take the service part of that phrase very seriously. We are not in business to give investment advice, to take the other side of our customer's trades, to protect retail investors (we have none) or to remove counter-party credit risk. Instead, our business is to provide more than 800 market participants – from commercial banks and pension plans to hedge and investment funds – a fair, open, and reliable electronic trading network for non-continuous, episodic negotiations and executions in generally less liquid OTC securities and derivatives. Our customers use MarketAxess as a means to facilitate efficient and transparent trade communication among mostly otherwise regulated market participants.

MarketAxess offers our customers different types of trading protocols to match their needs. This flexibility has served our customers well and allows our trading platform to flourish. We are neither an exchange for retail investors nor any other form of self-regulatory body. We offer a professional trading network. Regulating our swap market as if it were an exchange would be unwarranted and unwise.

Congress agrees. Dodd-Frank's execution mandate does not require cleared swaps to be traded only on DCMs or securities exchanges. Instead, Congress envisioned SEFs as new

competitive alternatives to DCMs or other exchanges that would be able to operate in a lesser-regulated environment where professional and sophisticated market participants could transact in swaps when advisable or mandated by the CFTC or the SEC.

Consistent with that intent, Congress sought to provide a flexible framework for SEF oversight. Otherwise, new market entrants would never become SEFs, leaving the swap execution field to exchanges or entities that could bear heightened regulatory costs, either because they already had built, or had the capital to build, that degree of functionality and regulatory infrastructure. Recognizing that regulatory costs would be important to any new enterprise, Congress eschewed one-size-fits-all, command and control requirements and instead adopted flexible Core Principles.

This congressional decision was critical. It provides the CFTC and the SEC discretion to adopt identical, or at least consistent, regulatory approaches for SEFs, relying on the CFTC's experience with Core Principles and the SEC's experience with the ATS and RFQ market structures.

For these reasons, flexibility should be central to SEF regulation and the CFTC's administration of the SEF Core Principles. In respect to trade execution, we prefer the maximum flexibility allowing an RFQ to be submitted to one other market participant, as reflected in Commissioner Sommers' proposed language and the SEC's proposal. While our trading technology and systems could be adapted to meet any of the proposed execution standards, including the approach proposed by the CFTC, we believe there is real value in the more flexible "one to one" RFQ format.

Our customers agree and their needs should be paramount. Each customer should be allowed to choose, through the RFQ selection of one or more potential counterparties, how much "pre-trade price transparency" the customer wants. The approach proposed by Commissioner Sommers and the SEC would accomplish that.

The CFTC proposals also provide for flexible third-party delegations by SEFs to meet virtually all of the Core Principles. We commend the CFTC for formulating this approach. If each SEF were required to build out a complete self-regulatory apparatus, including, among other things, the requirement to conduct an annual audit of each market participant, the SEF ranks would dwindle considerably and market participants might decide to restrict the number of SEFs they use. In order to adequately reduce a significant barrier to entry and thereby promote SEF trading, the CFTC must allow for effective delegations by ensuring that SEFs may realistically have a broad array of parties to which they could delegate performance of Core Principle functions, while retaining legal responsibility for that performance.

MarketAxess supports the CFTC's policy allowing temporary SEF registration. We believe, however, that when a SEF files a materially complete registration application and demonstrates how it will in the future have the capacity to comply with the applicable standards, the SEF applicant should be granted Temporary Registration until final action by the CFTC on the application. More specifically, the SEF should be able to obtain Temporary Registration if it certifies that it already meets most of the SEF Core Principles – impartial access, trading

protocols, conflict of interest (including the CFTC's ownership and governance standards when finalized), audit trails, only offering swaps that are not readily susceptible to manipulation, financial resources, revocation of access to those violating its trading rules, and clearing connectivity to applicable Derivative Clearing Organizations ("DCOs").

This is especially critical for MarketAxess. The CFTC's proposal conditions obtaining a Temporary Registration on the applicant's certification that it complies with the 15 SEF Core Principles. But compliance with some of those Core Principles necessarily will need to await the build-out of functionality by, as proposed, a registered futures association or another registered entity that is approved by the CFTC as a regulatory service provider (collectively, a "Regulatory Service Provider" or "RSP") that will perform the required services. One possible RSP (NFA) has stated that it could be six months following issuance of the final rules before that process is completed. In these circumstances, many SEF applicants will not be able to certify actual compliance for some time in the future and surely not at the time of filing a SEF registration application.

In the interim, MarketAxess should be able to offer a regulated trading platform in swaps, especially in light of our use of many of the same electronic trading protocols that we have used for many years for securities transactions subject to SEC oversight as well as our ability to meet the bulk of the CFTC's standards. Otherwise our competitive position will be severely compromised as other SEFs that have existing self-regulatory functionality will be first to market. Our recommendation is perfectly compatible with the congressional goal to promote trading on, and competition among, SEFs. Requiring a SEF to spend considerable resources to develop capabilities that a SEF plans to delegate as soon as a RSP is prepared to take-over those functions would be a both a wasteful use of valuable resources and a potentially fatal barrier to entry for many SEFs.

MarketAxess also commends the CFTC for proposing, as we understand it, that the agency itself will make the all important determination as to what swaps must be cleared and thus traded on a SEF. We are confident that the CFTC will set these mandates based upon the available data and evidence of trading activities. We also agree with the CFTC that it should set the minimum size for swap blocks (again based on actual trading experience), but suggest that the CFTC should be guided by concerns expressed by many of our customers that the CFTC's proposed block trading size requirement is too large and the CFTC's proposed permissible public reporting delay is too short.

MarketAxess requests that the CFTC consider some form of passport or notice SEF registration for those entities that register with the SEC as SB SEFs. Congressman Barney Frank's letter of February 18, 2011, expresses well the rationale for this policy. As the CFTC and the SEC are implementing identical SEF registration standards, each agency should recognize the validity of the other agency's SEF registration determination. As MarketAxess intends to operate a SEF for both single-issuer and broad-based index CDS, we urge the CFTC and SEC generally to adopt SEF registration and regulatory standards that are identical or as close to identical as possible. That policy is consistent with the public interest and the efficient use of government and private sector resources.

Lastly, MarketAxess offers numerous substantive and technical suggestions in this letter. We have tried to provide thoughtful and constructive suggestions to the CFTC on how its proposal could be improved to serve better the statutory goal of promoting SEF trading with its resulting increase in pre-trade transparency. Included among our comments are:

1. Annual market participant audits by SEFs should not be required; auditing SEF market participants instead should be shifted to NFA or to FINRA.

2. SEFs should be permitted to rely on representations from their market participants on:
   a) status as an eligible contract participant;

   b) eligibility to qualify for the commercial end user exemptions from the clearing and execution mandates;

   c) compliance with the clearing mandate; and

   d) existence of credit documentation and ability to post collateral for uncleared swaps.

3. Disciplinary procedures required of SEFs should be streamlined through a summary fine program rather than the extensive disciplinary procedures proposed.

4. SEFs should be allowed to use anonymous trading data for commercial or business purposes.

5. SEFs should be able to list new swaps not only on an individual basis, but as a class of transactions.

6. Once a SEF has commenced operations, absent a showing of abuses, the CFTC should refrain from banning certain execution methods.

7. A SEF should have a duty to monitor only activity on its market, not those operated by its competitors.

Our overall objective is to make sure that SEF regulation does not mimic exchange regulation but instead allows SEFs to offer flexible, efficient and reliable electronic trading networks that meet the needs of all qualified professional market participants. We believe that, as detailed below, our approach is perfectly compatible with, and in many respects even compelled by, congressional intent. As in the past, we would be happy to discuss these observations at any time that may be convenient for the CFTC and its staff.

BACKGROUND

MarketAxess Story

MarketAxess operates a leading electronic trading platform that promotes transparency,

price discovery, and liquidity in the corporate bond and other fixed income markets and allows investment industry professionals to trade efficiently corporate bonds, other types of fixed-income instruments and derivatives, including CDS. Today, more than 800 active institutional investor clients, including investment advisers, mutual funds, insurance companies, public and private pension funds, bank portfolios, broker-dealers and hedge funds, use the MarketAxess platform to trade with 78 broker-dealer market-maker liquidity providers, including substantially all of the leading broker-dealers in global fixed-income trading.[3] We also provide fixed-income market data, analytics and compliance tools that help our clients make trading decisions, and our automated post-trade messaging facilitates the communication of trade acknowledgment and allocation information between our institutional investor and broker-dealer clients.

MarketAxess was formed in April 2000 in response to investors' need for a single electronic trading platform with easy access to multi-dealer competitive pricing in a wide range of debt securities. From the time of the commercial launch of our electronic trading platform in January 2001, our annual trading volume has increased from $11.7 billion to more than $400 billion, and we have consistently added new clients, having commenced business with approximately 60 institutional investor clients and eight broker-dealer clients. Our volume in U.S. high-grade corporate bonds represented approximately 8.4% of the total U.S. high-grade corporate bond volume,[4] excluding convertible bonds, for 2010 as reported on FINRA's Trade Reporting and Compliance Engine ("TRACE"), which includes inter-dealer and retail trading as well as trading between institutional investors and broker-dealers.[5]

MarketAxess permits qualified dealers ("Dealers") and institutional investor firms ("Users") to access its system and relies on existing SEC classifications and oversight to help determine whether to grant access. Dealers, which must be registered with the SEC as a broker-dealer and a member of a SRO (typically FINRA), must execute a MarketAxess Dealer Agreement to gain access to the MarketAxess platform. Dealers must agree to comply with Federal and State laws as well as applicable SEC rules and regulations. Dealers must comply with recordkeeping requirements under SEC regulations and the rules of the SRO where a Dealer is a member.

MarketAxess and its participating Dealers agree to cooperate with one another, and

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[3] Our broker-dealer clients accounted for approximately 97% of the underwriting of newly-issued U.S. high-grade corporate bonds and approximately 68% of the underwriting of newly-issued European high-grade corporate bonds in 2010. We believe these broker-dealers also represent the principal source of secondary market liquidity in the markets in which we operate.

[4] Although we believe that we account for substantially all of the total U.S. high-grade corporate bond volume that is traded electronically, "traditional" means of trading (*i.e.*, telephone and email) remain the manner in which the majority of bonds are traded between institutional investors and broker-dealers.

[5] TRACE is a FINRA-developed service that disseminates real-time price information for over-the-counter corporate bond transactions (99 percent of U.S. corporate bond transactions occur in the OTC market). The system was introduced in 2002 in order to bring price transparency to the corporate bond market. Under SEC rules, all broker-dealers who are FINRA members must report transactions in corporate bonds to TRACE, which disseminates price information about these transactions immediately. TRACE does not disseminate information about the identity of the counterparties to a trade.

provide access to information as necessary, in the event of a regulatory audit or examination. The Dealer Agreement allows MarketAxess to suspend a Dealer's access at any time and for any reason. Dealers must maintain specified system security requirements. The agreement also requires Dealers to honor settlement obligations and settle through customary industry means. MarketAxess reserves discretion on whether to admit qualified new Dealers.

In order to access MarketAxess' platform, a User must execute a User Agreement and identify Dealers with whom it has a trading relationship and documentation in place. Once a Dealer identified by the User confirms to MarketAxess that the requisite documentation exists, the User will be able to access information from, and transact with, that Dealer on the MarketAxess trading platform.

MarketAxess also requires each User to be a Qualified Institutional Buyer ("QIB"), as defined by SEC regulations, and to provide its QIB certification. Users are not permitted to share information from MarketAxess' system with any third parties. Users must provide information about themselves or their clients to MarketAxess, upon request, when necessary for MarketAxess or a Dealer to comply with regulatory reporting requirements. Users must meet system and security requirements specified in the User Agreement. Users are also responsible for complying with any recordkeeping requirements under any applicable laws as well as rules and regulations of the SEC and any SRO with which the User is a member. The User Agreement also permits MarketAxess to suspend or revoke a User's access at any time and for any reason.

MarketAxess is not responsible for transactions entered into between Users and Dealers. Rather, we serve as an intermediary between our institutional investor clients and our broker-dealer clients, enabling them to meet, agree on a price, and then transact with each other.

Traditionally, bond trading has been a manual process, with product and price discovery conducted over the telephone between two or more parties. This traditional process has a number of shortcomings resulting primarily from the lack of a central trading facility for these securities, which creates difficulty matching buyers and sellers for particular issues. Many corporate bond trading participants use e-mail and other electronic means of communication for trading corporate bonds. While this has addressed some of the shortcomings associated with traditional corporate bond trading, the process is still hindered by limited liquidity, limited price transparency, significant transaction costs, compliance and regulatory challenges, and difficulty in executing numerous trades at one time. Efforts to develop exchange-sponsored central limit order book platforms for corporate bonds also have not been successful due to limited liquidity.

In contrast to traditional bond trading methods, our multi-dealer trading platform allows our institutional investor clients to simultaneously request competing, executable bids or offers from our broker-dealer clients and execute trades with the broker-dealer of their choice from among those that choose to respond. We enable our broker-dealer clients to efficiently reach our institutional investor clients for the distribution and trading of bonds. In addition to U.S. high-grade corporate bonds, European high-grade corporate bonds and emerging markets bonds, including both investment-grade and non-investment grade debt, we offer our clients the ability to trade crossover and high-yield bonds, agency bonds, asset-backed and preferred securities and CDS.

Through our disclosed multi-dealer RFQ trading functionality, our institutional investor clients can determine prices available for a security, as well as trade securities directly with our broker-dealer clients. The price discovery process includes the ability to view indicative prices from the broker-dealer clients' inventory available on our platform, access to real-time pricing information and analytical tools (including spread-to-Treasury data, search capabilities and independent third-party credit research) and the ability to request executable bids and offers simultaneously from up to 64 of our broker-dealer clients during the trade process.

Our services relating to trade execution include single and multiple-dealer inquiries; list trading, *i.e.*, the ability to request bids and offers on multiple bonds at the same time; and swap trading, which is the ability to request an offer to purchase one bond and a bid to sell another bond, in a manner such that the two trades will be executed simultaneously, with payment based on the price differential of the bonds. Once a trade is completed on our platform, the broker-dealer client and institutional investor client may settle the trade with the assistance of our automated post-trade messaging, which facilitates the communication of trade acknowledgment and allocation information between our institutional investor and broker-dealer clients.

It is important to note that as a result of our electronic connectivity to the trade processing operations of our participating dealers, the vast majority of the trades done on the MarketAxess trading platform are reported to TRACE within one to two minutes following execution, further enhancing transparency and price discovery in the markets we serve.

We provide numerous benefits to our institutional investor and broker-dealer clients over traditional fixed-income trading methods, including:

Competitive Prices. By enabling institutional investors to simultaneously request bids or offers from our broker-dealer clients, our electronic trading platform creates an environment that motivates our broker-dealer clients to provide competitive prices and gives institutional investors confidence that they are obtaining a competitive price.[6]

Transparent Pricing on a Range of Securities. The commingled multi-dealer inventory of bonds posted by our broker-dealer clients on our platform consists of a daily average of more than $70 billion in indicative bids and offers. Subject to applicable regulatory requirements, institutional investors can search bonds in inventory based on any combination of issuer, issue, rating, maturity, spread-to-Treasury, size and dealer providing the listing, in a fraction of the time it takes to do so manually. Institutional investor clients can also request executable bids and offers on our electronic trading platform on any debt security in a database of U.S. and European corporate bonds.

Our platform transmits bid and offer requests in real-time to broker-dealer clients, who

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[6] For typical MarketAxess multi-dealer corporate bond inquiries, the range of competitive spread-to-Treasury responses is, on average, approximately 10 basis points (a basis point is 1/100 of 1% in yield). As an example of the potential cost savings to institutional investors, a one basis point savings on a $1 million face amount trade of a bond with 10 years to maturity translates to aggregate savings of approximately $775.00.

may respond with executable prices within a time period specified by the institutional investor. Institutional investors may also elect to display live requests for bids or offers anonymously to all other users of our electronic trading platform, in order to create broader visibility of their inquiry among market participants and increase the likelihood that the request results in a trade.

Improved Cost Efficiency. We provide improved efficiency by reducing the time and labor required to conduct broad product and price discovery. Single-security and multi-security inquiries (bid or offer lists) can be efficiently conducted with multiple broker-dealers. In addition, our Corporate BondTicker™ service eliminates the need for manually-intensive phone calls or e-mail communication to gather, sort and analyze information concerning historical transaction prices.

Greater Trading Accuracy. Our electronic trading platform includes verification mechanisms at various stages of the execution process that result in greater accuracy in the processing, confirming and clearing of trades between institutional investor and broker-dealer clients. These verification mechanisms are designed to ensure that our broker-dealer and institutional investor clients are sending accurate trade messages by providing multiple opportunities to verify they are trading the correct bond, at the agreed-upon price and size. Our platform assists our institutional investor clients in automating the transmittal of order tickets from the portfolio manager to the trader, and from the trader to back-office personnel. This automation provides more timely execution and a reduction in the likelihood of errors that can result from manual entry of information into different systems.

Efficient Risk Monitoring and Compliance. Institutional investors and their regulators are increasingly focused on ensuring that best execution is achieved for fixed-income trades. Our electronic trading platform offers both institutional investors and broker-dealers an automated audit trail for each stage in the trading cycle. This enables compliance personnel to review information relating to trades more easily and with greater reliability. Trade information including time, price and spread-to-Treasury is stored securely and automatically on our electronic trading platform. This data represents a valuable source of information for our clients' compliance personnel. Importantly, we believe the automated audit trail, together with the competitive pricing that is a feature of our electronic trading platform, gives fiduciaries the ability to demonstrate that they have achieved best execution on behalf of their clients.

Regulation ATS

Regulation ATS provides a good example of a flexible trading system that has helped foster competition and innovation in securities markets, while maintaining regulatory oversight. The SEC promulgated Regulation ATS in 1998 in response to the emergence and growth of new unregulated electronic trading platforms that were handling a significant and growing share of securities trading. Recognizing the importance of these new, emerging markets, Regulation ATS was specifically designed to provide "a regulatory framework that addresses [the SEC's] concerns about alternative trading systems without jeopardizing the commercial viability of these markets." Regulation of Exchanges and Alternative Trading Systems, 63 Fed. Reg. 70844, 70846 (Dec. 22, 1998) (also cited in Order Extending Temporary Exemptions for B-Ds and Exchanges Effective Transactions in CDS, Release No. 34-60718, p. 3-4, n. 10) (Sept. 9, 2009). Only sophisticated market participants (no retail customers) may trade on an ATS.

Regulation ATS permits a trading platform, that would otherwise be regulated as a securities exchange, to rely on FINRA to perform market oversight and surveillance.[7] This allows a trading platform that experiences episodic trading to avoid building a costly internal SRO apparatus required for registered securities exchanges. An extensive internal SRO structure can only be supported by high transaction volume that generates correspondingly high transaction fees. When trading volume on an ATS in a particular security relative to the trading volume of that security on a national securities exchange hits certain benchmarks, ATSs are required to comply with public price reporting and access requirements and to meet increased system capacity and security requirements. Regulation ATS provides a flexible and cost-effective framework by allowing an SRO separate from the trading platform to perform the self-regulatory duties. A similar model is appropriate for SEFs, which are expected to experience similar episodic trading and limited execution fees.

Statutory SEF Framework and CFTC Proposal

SEFs are critical components of the Dodd-Frank reforms. Over time, Congress intended that swap executions would migrate to SEF trading platforms to serve the goal of more competitive and transparent trading. We understand the CFTC's proposals to be intended to attempt to achieve these goals.

SEFs are Alternatives to DCMs.

Even before drafting the bill that became the Dodd-Frank Act, the Obama Administration had identified the goal of moving swap trading to organized markets. The Administration contemplated two kinds of regulated markets where swaps could trade – traditional regulated exchanges and alternative "regulated transparent electronic trade execution systems" – in order to increase the number of traded swaps, which would help swap market participants by adding competition and price transparency. Treasury White Paper, p. 48-49 (June 17, 2009).[8]

In Dodd-Frank itself, Congress was very specific about the statutory goal for SEFs. Congress stated:

> *"The goal of this section is to promote the trading of swaps on [SEFs] and to promote pre-trade transparency in the swaps market."* Dodd-Frank § 733, adding new CEA § 5h(e).

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[7] An ATS may only set rules governing the conduct of participants while trading on its system and may only discipline its participants by excluding them from trading. An ATS must also comply with recordkeeping and retention requirements under Regulation ATS.

[8] The Administration's first draft of the bill called for all standardized swaps to be executed on a DCM or an "Alternative Swap Execution Facility" (called a SEF in Dodd-Frank) and provided that any swap could be traded on an ASEF. Treasury Proposal of Title VII, § 713(a)(2), proposing new CEA § 2(j)(8) and § 719, proposing new CEA § 5h(b) (Aug. 2009).

SEFs were intended to be less regulated than DCMs to promote swap trading.

Dodd-Frank includes four basic SEF provisions: a definition; a registration requirement; a series of flexible Core Principles; and the execution mandate for certain swaps. Congress states that all of these SEF provisions are intended to promote the trading of swaps on SEFs. Dodd-Frank § 733, adding new CEA § 5h(e). Congress defines the term SEF 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, that—(A) facilitates the execution of swaps between persons; and (B) is not a designated contract market."* Dodd-Frank § 721(a)(21), adding new CEA § 1a(50).

This definition states explicitly that a trading facility operated by a DCM is not a SEF. DCMs may still operate SEFs, but the two are different regulatory categories and SEF trading was intended to be different from DCM trading. Any person that operates a facility for the trading of swaps must be registered as a SEF or a DCM. Dodd-Frank § 733, adding new CEA § 5h(a)(1).[9] The key difference is that non-Eligible Contract Participants may only trade swaps on DCMs. Retail customers may not participate on SEFs; they are purely professional markets. Dodd-Frank § 723(a)(2), adding new CEA § 2(e).

Like DCMs, registered SEFs must comply with statutory Core Principles. DCMs must meet 23 Core Principles; by contrast, SEFs need only satisfy 15 Core Principles. Congress grants both SEFs and DCMs reasonable discretion in establishing compliance with these Core Principles (unless otherwise determined by the CFTC). Dodd-Frank § 733, adding new CEA §§ 5h(f)(1)(B) and 5(d)(1)(B). However, these two sets of flexible Core Principles exhibit substantive regulatory differences.

While DCMs must satisfy a centralized price discovery standard in some circumstances (DCM Core Principle 9), SEFs need not do so. The absence of a Core Principle 9 analogue demonstrates the clear congressional intent that SEF trading and execution systems should have greater flexibility. Unlike DCMs, SEFs also do not need to satisfy a Core Principle to provide fair and equitable trading. *Cf.* Dodd-Frank § 735(b), adding new CEA § 5(d)(12)(B). Also, SEF disciplinary procedures are allowed to be less extensive than DCM disciplinary procedures. *Compare* new CEA § 5(d)(13) *with* new CEA § 5h(f)(4)(B).

Lastly, Dodd-Frank mandates that many swaps subject to the clearing mandate must be executed on a SEF or a DCM so long as a SEF or a DCM "makes the swap available to trade." New CEA § 2h(8). Although commercial end users are exempt from this requirement, the trade execution mandate was designed to encourage robust trading of swaps on SEFs and is the statutory backdrop to the CFTC's proposal.

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[9] There is a corresponding SB swaps provision. Dodd-Frank § 763(c), adding new Exchange Act § 3D(a)(1).

OVERVIEW OF THE CFTC'S SEF PROPOSAL

The CFTC has proposed a package of rules to implement the SEF provisions. Dodd-Frank § 733, adding new CEA §§ 5h(e) and (h). To implement the SEF definition, the CFTC proposes Rule 37.9, which would allow SEFs to use Order Book and RFQ systems to offer swaps for trading that are subject to the execution mandate. As proposed, an RFQ must be sent to a minimum of five market participants. RFQ platforms also would need to provide market participants with the ability to post firm and indicative quotes on a centralized electronic screen accessible to all of that SEF's market participants.

To implement the registration requirement, the CFTC proposes an extensive array of information to be submitted in the registration application, which it concedes is largely information the CFTC requires in DCM applications. Proposed Rules at 1216. The CFTC proposes numerous rules to implement the 15 SEF Core Principles in Subparts B through P. The CFTC's proposal also seems to provide that the CFTC will determine which swaps are made available for trading subject to the execution mandate based on data submitted by the relevant SEFs.

Consideration of a SEF's Compliance Costs Under Proposed Part 37

In developing the appropriate regulatory structure for SEFs, the CFTC must consider the costs its proposal would impose on new SEFs such as MarketAxess. CEA § 15. *See also* Improving Regulation and Regulatory Review, Executive Order 13563, 76 Fed. Reg. 3821, Section 1(a) (Jan. 21, 2011) (requiring that our regulatory system "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends," and take into account quantitatively and qualitatively, benefits and costs).[10] If SEF regulations impose costs that are too great, fewer SEFs will be created, which is contrary to the public interest the statute endorses in promoting SEF trading. CEA § 15(a)(2)(E) (requiring the CFTC to consider the costs and benefits of proposed CFTC action in light of public interest considerations).

The CFTC's proposal does not analyze the cost of organizing and operating a SEF. More generally, the CFTC's "Cost-Benefit" analysis does not consider the burden of its proposal or reviews the regulatory costs of possible alternative regulatory approaches to its proposal. Ironically, the proposal does contain one paragraph reciting anecdotal costs to the U.S. economy

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[10] Section 1(b) of Executive Order 13563 provides in relevant part that "[a]s stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits ."

Section 4 of Executive Order 13563 provides that, "[w]here relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. "

if SEF trading is not successful. But the CFTC's analysis overlooks whether regulatory costs impose barriers to entry for SEFs. By comparison, the SEC estimates that the initial costs for an entity that has existing operations that could be modified to become an SB SEF will be approximately $5 million. The SEC also notes that "industry sources" generically estimate the cost of forming an SB SEF will be between $15 million and $20 million, depending upon the extent of an SB SEF's operations prior to implementation of the Proposed Rules. Registration and Regulation of Security-Based Swap Execution Facilities, 76 Fed. Reg. 10948, 11041 (Feb. 28, 2011).

SUBSTANTIVE COMMENTS

MarketAxess has reviewed the CFTC's comprehensive SEF proposal. We share the CFTC's strong interest in promoting the trading of swaps on SEFs, which will enhance pre-trade price transparency, reduce swap transaction costs and encourage more competition among liquidity providers. Our comments are designed to "promote responsible innovation and fair competition" pursuant to § 3(b) of the CEA by strengthening the viability of the SEF business model under appropriate CFTC oversight.

1. Broad and Effective Delegation of SEF Self-Regulatory Functions.

The CFTC has correctly recognized that many SEFs will likely comply with the applicable statutory Core Principles and CFTC rules by delegating the actual performance of self-regulatory duties to a CFTC-approved regulatory service provider. MarketAxess looks forward to working with the CFTC to make this delegation and third party service provider system work on a timely and constructive basis.

A. SEFs Should be Allowed to Delegate Broadly Core Principle Self-Regulatory Duties.

Proposed Rule 37.204(a) would permit a SEF to arrange for a RSP to provide services to assist the SEF in complying with the SEF Core Principles. We recognize that SEFs that delegate will still be responsible legally for compliance with the Core Principles. We agree with the CFTC that a SEF should be allowed to delegate broadly many of the SEF's duties to comply with the SEF Core Principles.[11]

The cost of developing the infrastructure and operational abilities needed to satisfy the proposed compliance, surveillance and disciplinary duties would be prohibitively expensive for an entity interested in becoming a SEF that is not already an exchange. Requiring a SEF to bear these costs would limit drastically new SEF market entrants. A SEF's ability to delegate these

[11] In Part 5 of this letter, we ask the CFTC to confirm that certain functions are delegable by a SEF. Some of the Core Principles involve functions that we would not expect an SEF to be able to delegate—operating a trading platform that meets the CFTC's base-line specifications and maintaining the required financial resources, for example. But we would urge the CFTC to be very flexible in considering what functions may be delegable by SEFs, either partially or completely. As a new regulatory category, it is uncertain how the SEF apparatus will evolve and the role RSPs will play in helping SEFs meet their regulatory duties.

duties broadly and effectively to an RSP that already has or could more easily develop the needed infrastructure and operational abilities will provide a more cost-effective means of compliance and allow new market entrants to become SEFs. This will further Congress' intent of promoting competition and trading of swaps on SEFs.

Nothing in Dodd-Frank limits in any way the authority of the CFTC to permit broad delegations by SEFs of their self-regulatory functions. We support the CFTC's recognition of the need for flexible delegation of self-regulatory duties by SEFs in order to make the SEF structure work.[12]

B. The CFTC's Proposed Definition of a SEF RSP Should Be More Flexible.

The CFTC's proposal would limit possible RSPs that could serve as a SEF delegate to CFTC-approved registered futures associations and other registered entities. Proposed Rule 37.204(a). NFA, CME and ICE could serve as RSPs, for example, but FINRA could not. FINRA has provided similar regulatory services for the securities industry for many years and may well serve as an SRO for security-based SEFs. The CFTC should expand its RSP category to include FINRA and any others qualified to perform the SEF functions.

The CFTC also should allow for the possibility that a group of SEFs could form a joint venture to create a special RSP for SEFs that would not be a registered entity. There is no reason for the CFTC to block that option for SEFs, especially where the CFTC's proposal reserves the right to pre-approve an RSP. Expanding the scope of prospective RSPs beyond registered futures associations and other registered entities could encourage innovation and competition and allow for new entities such as a SEF-specific SRO to become SEF RSPs.

While Proposed Rule 37.204(a) requires that the CFTC approve the RSP, the proposal makes no mention of how the CFTC will assess and approve RSPs. We ask that the CFTC clarify this process in its final rulemaking by including any criteria it will consider when assessing whether to approve an RSP.

2. Effective Temporary SEF Registration.

The CFTC has proposed correctly a system for Temporary Registration of SEFs in order to allow the benefits of SEF trading to be applied to the swap market when SEF registration applications are filed and before the CFTC has analyzed and approved any SEF (permanent) registration applications. As the CFTC notes, a delay in the process of registering SEFs "could adversely affect SEF applicants, undermine the efficient implementation of the Dodd-Frank Act, create legal uncertainty for market participants and adversely affect the swaps market."

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[12] The CFTC notes that Congress did not amend the delegation provisions in CEA § 5c(b) to include SEFs. This is an apparent oversight. Dodd-Frank made no changes to CEA § 5c(b), which also confers delegation to derivatives transaction execution facilities, which were eliminated from the CEA by Dodd-Frank. Allowing appropriate delegations by SEFs is perfectly consistent, if not compelled, by the "rule of construction" Congress enacted that all SEF provisions should be applied to promote SEF trading, which broad and effective delegations to qualified service providers will surely accomplish. Dodd-Frank § 733, adding new CEA § 5h(e).

Proposed Rules at 1216.

To allow a platform or system that is facilitating the trading of swaps to "continue operating" while its application is being reviewed, the CFTC has proposed Rule 37.3(b), which would allow a SEF applicant to request Temporary Grandfather Relief from SEF Registration if that applicant:

1. provides data showing that swaps have been and continue to be traded on the applicant's trading system or platform at the time of submitting the request;

2. files a complete SEF application; and

3. certifies it believes it will meet the SEF regulations when operating under Temporary Registration. Proposed Rule 37.3(b)(1).

MarketAxess strongly supports the Temporary Registration proposal. To allow all qualified SEF applicants to operate under Temporary Registration, however, we offer some suggested and critical improvements for the CFTC's consideration.

A. The CFTC Should Clarify What Existing Swap Trading Platforms Would Qualify for Temporary SEF Registration.

The CFTC's proposal would apply to applicants that have already been operating a swap trading system or platform at the time of filing the application. Proposed Rule 37.3(b)(1)(ii) states that an applicant for temporary SEF registration must provide to the CFTC "transaction data that substantiates that the execution or trading of swaps has occurred and continues to occur on the applicant's trading system or platform at the time the applicant submits the request." We do not understand the CFTC to have intended that SEFs would not qualify for Temporary Registration if they merely made swaps available for trading on their facilities even if material trading volume had not yet occurred. [13]

To avoid any ambiguity in this regard, we recommend that the CFTC consider revising Proposed Rule 37.3(b)(1)(ii) to renumber the existing text as (ii)(A) and add an alternative test through the following language: an applicant has ..."**(A)** Provided transaction data that substantiates that the execution or trading of swaps has occurred and continues to occur on the applicant's trading system or platform at the time the applicant submits the request**; or (B) Provided materials substantiating that the applicant operates a trading or execution system for trading swaps or security-based swaps**, and".[14] This proposed alternative test would

[13] MarketAxess believes it would be more accurate if, instead of "temporary grandfather relief," the CFTC calls this "Temporary Registration" (which would also be consistent with the SEC's approach).

[14] Although it is not clear from the CFTC's proposal, our understanding is that an applicant's showing of existing swap trading is not limited only to swaps, and would include "security-based" swaps.

confirm that a SEF applicant that hopes to attract market participants to a new or yet unused swap trading system could still qualify for Temporary Registration status as a SEF.

B. What showing should be required for Temporary SEF Registration?

Proposed Rule 37.3(b)(1)(iii) has an inadvertent "Catch-22" quality to it. Under Proposed Rule 37.3.(b)(1)(ii), an applicant for Temporary Registration must certify "that the applicant believes that when it operates under temporary grandfather relief it will meet the requirements of this Part 37." Surely, most applicants could make this certification in good faith. But for the certification to be meaningful, those SEF applicants that will be delegating their self-regulatory functions to a regulatory services provider must have confidence that a number of issues will be resolved properly consistent with their obligations as SEFs.

Right now, it is hard to see how these issues can be resolved by the time the SEF registration applications must be filed (and the certification of compliance simultaneously must be provided). Each phase of this process will take time. As an example, one potential RSP (NFA) has said it is confident that it could build the systems necessary to perform these functions six months after the rules are finalized.[15]

Until an RSP is available to accept a SEF's delegation, no SEF that will delegate these duties could demonstrate that it has the **capacity** to meet all of the proposed obligations when the SEF files its registration application. Yet, that demonstration is a prerequisite to begin operations as a permanently registered SEF and as a temporarily registered SEF under Proposed Rules 37.3(a)(2) and 37.3(b)(1)(i), respectively. To make the certification, a SEF will need to:

- know what Core Principle functions could be delegated (which the CFTC final rules should clarify);
- know what Core Principle functions it must perform itself, if any, not through an RSP (which the CFTC final rules should clarify);
- know what functions RSPs could provide or would develop the capacity to provide subject to CFTC-approval of those functions;
- arrange for an appropriate delegation with an RSP;
- make certain the RSP has the resources to develop the necessary self-regulatory systems;
- develop with the RSP methods for connecting SEF market data to the RSP's systems;
- monitor the RSP's development of appropriate systems; and
- then build a mechanism for the SEF to supervise the quality and effectiveness of the service provided by the RSP on an ongoing basis.

As this list suggests, and experience supports, registering new SEFs in a new registration category will be an art, not a science, and could involve considerable give and take with the

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[15] National Futures Association Comment Letter (Mar. 8, 2011), page 3, available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31167&SearchText= .

CFTC staff as issues arise and get worked out.[16] This is a natural part of the process, and could even affect those SEFs that are existing exchanges and would not need to delegate functions to an RSP (or might be RSPs themselves). It may be difficult for a SEF applicant in these circumstances to be confident that it has filed a materially complete application or to make the required certification of immediate compliance that is needed for Temporary Registration.

These difficulties should not, in our view, foreclose SEFs from filing their registration applications and qualifying for Temporary Registration. We request that the CFTC develop an alternative approach for SEFs seeking Temporary Registration whereby a SEF's application would be deemed to be "materially complete" and its certification acceptable for Temporary Registration purposes if the applicant certifies that:

1. the applicant's execution methods would comply with the permitted execution methods under Proposed Rule 37.9;

2. the applicant has adequate financial resources to satisfy Proposed Rules 13.1300-37.1306;[17]

3. the applicant satisfies governance, ownership and conflict of interest requirements in Proposed Rules 37.19 and 40.9;[18]

4. the applicant will establish and apply fair and objective access requirements to its trading platform for any qualifying Eligible Contract Participants (including buy-side participants as well as liquidity providing swap dealers);

5. the applicant will revoke access of any market participant that violates the SEF's rules;

6. the applicant would only make swaps available that are not readily susceptible to manipulation by satisfying Proposed Rules 37.300 and 37.301(a);

7. the applicant will produce and retain an audit trail of all swaps entered into on, or pursuant to the rules of, its platform;

8. the applicant is connected, and has the ability to send a swap for clearing,

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[16] We request that the CFTC confirm in its final rule that the filing of an amendment to a SEF application would not disqualify an entity from Temporary Registration or terminate that entity's Temporary Registration.

[17] MarketAxess assumes that in Proposed Rule 37.1304, the intended cross-reference is 37.1301 (not 37.701) as discussed below in section 5.

[18] We assume that, for Temporary Registration purposes, Proposed Rule 40.9(b)(1)(iii) would not incorporate all of Part 37.

to at least one DCO; and

9. the applicant's SEF application demonstrates a good faith effort to comply with all applicable SEF regulations in the future.

MarketAxess believes that an applicant that can demonstrate compliance with these core requirements of the SEF Core Principles should be qualified to begin operations as a temporarily registered SEF. In so doing, the CFTC would serve the statutory goals of promoting swap trading on SEFs and thus also promoting competition, while leveling the SEF playing field among those that will be compelled to delegate their self-regulatory functions to third-parties and those that will not.

C. Once the CFTC Adopts Final Rules, SEFs Should Have 180 Days to File Registration Applications.

In order to certify compliance with the applicable Core Principles, MarketAxess anticipates it will need to make a number of changes and enhancements to our SEF operations, including our trading systems. Changes and enhancements to our trading system typically require a 90-120 day development cycle. Once required functionality is finalized, business analysts write detailed specifications. Developers then use the written specifications to write code for the software changes. Following the development cycle, there is a thorough quality assurance testing period before the changes are introduced into the live trading system. Given these practical considerations, we recommend that the CFTC set the filing date for SEF applications and Temporary Registration certifications for 180 days after the final rules are adopted by the CFTC to allow applicants to adapt to the final rules.

D. Entities Acting Under Temporary Registration Need the Ability to List Swaps.

Proposed Rule 37.4 would permit SEFs generally to list swaps in one of two ways, by voluntarily submitting the swap for CFTC approval or by self-certifying the swap. Temporarily registered SEFs should not be treated differently than permanently registered SEFs and need the ability to list swaps by voluntarily submitting the swap for CFTC approval as well as by self-certifying the swap.[19] We ask that the CFTC clarify in Rule 37.4 that a Temporarily Registered SEF may list swaps in either of these ways.

E. Temporary SEF Registration Should Not End in a Year.

We support Proposed Rule 37.3(b)(2), which provides that Temporary Registration would not expire until the date that the CFTC grants or denies registration (unless the CFTC rescinds the SEF's temporary relief). MarketAxess is concerned, however, that Proposed Rule 37.3(b)(3) could frustrate the intent behind Temporary Registration of avoiding disruptions in the

[19] *But see* Proposed Rule 37.4(a)(2), providing that a swap voluntarily submitted for approval by a temporarily registered SEF could not be deemed to be approved until that SEF becomes permanently registered.

operation of swap trading.

Under Proposed Rule 37.3(b)(3), the provision providing for Temporary Registration (including Proposed Rule 37.3(b)(2)) would terminate one year from the effectiveness of this regulation, effectively placing a one-year expiration date on Temporary Registration. If the CFTC has not completed its review and approved a SEF's application one year after the SEF regulations become effective and that entity is operating under Temporary Registration, Proposed Rule 37.3(b)(3) would prevent that entity from continuing to operate. MarketAxess strongly recommends that the CFTC not tie its own hands by limiting the Temporary Registration period to one year.

Proposed Rule 37.3(b)(2)(ii) provides that the CFTC could rescind a SEF's Temporary Registration, but does not include criteria that the CFTC would apply when considering whether to rescind Temporary Registration. Entities interested in becoming SEFs would benefit from a clarification of the criteria under which the CFTC may revoke Temporary Registration. We request that the CFTC provide that clarification in its final rules.

3. Passport SEF Registration Should Be Allowed For Registered SEFs and SB SEFs.

The CFTC should accept as a registered SEF any entity that is registered with the SEC as a SB SEF and vice versa. Congress clearly envisioned passport registration for SEFs and SB SEFs. Specifically, Congress authorizes the CFTC to exempt a SEF from registration "if the [CFTC] finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission." Dodd-Frank § 733, adding new CEA § 5h(g).[20] Congress also provides that a person shall register as a SEF with the CFTC regardless of whether that person is also registered as a SEF with the SEC. Dodd-Frank § 733, adding new CEA § 5h(a)(2).[21]

Consistent with new CEA §§ 5h(g) and 5h(a)(2), respectively, a simple notice registration would exempt an SEC-registered SB SEF from the CFTC's full registration process, but still provide for that entity's CFTC registration as a SEF.[22] Notice registration would also be consistent with the approach Representative Barney Frank, Ranking Member of the House Committee on Financial Services and a sponsor of Dodd-Frank, recently urged the SEC and CFTC to take when adopting SEF rules to implement Dodd-Frank. As noted in Representative

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[20] *See also* corresponding provision Dodd-Frank § 763(c), adding new Exchange Act § 3D(e) - EXEMPTIONS—The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

[21] *See also* corresponding provision Dodd-Frank § 763(c), adding new Exchange Act § 3D(a)(2) - DUAL REGISTRATION—Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

[22] The SEC's adoption of this approach would be consistent with Exchange Act §§ 3D(a)(2) and 3D(e).

Frank's February 18 letter to Chairmen Mary Schapiro and Gary Gensler:

> [I]t is very important for both the SEC and the CFTC to coordinate and harmonize their respective rules as closely as possible. Differences in the rules that are not required by differences between various financial products will only serve to drive up the cost of implementation, without improving the regulatory structure. . . [S]waps (and securities-based swaps)[ ] are very different products than those currently traded in the highly-evolved equities and futures markets, and they serve a variety of different purposes. Harmonizing SEC's and CFTC's respective regulations within the swaps markets, to the maximum extent possible, will maintain liquidity and stability in these new markets and reduce costs.

Notice registration would avoid significant expenditures of both agencies' resources in reviewing registration applications for the same system or platform. This would also conserve a SEF's resources by permitting it to prepare one comprehensive application rather than two.[23]

Notice registration would require the CFTC's and SEC's rules to be comparable. We agree with Representative Frank that this harmonization is essential to the efficient and effective regulation of SEFs and SB SEFs. Differences in swaps and SB swaps do not necessitate the significant differences between the CFTC's SEF and the SEC's SB SEF proposals.

MarketAxess currently intends to apply to become both a SEF and a SB SEF, using the same trading protocols and systems for, at least, single issuer CDS and index CDS. We see no basis for materially different CFTC and SEC SEF rules for these products. The common Core Principles that Congress adopted for SEFs and SB SEFs further support adopting identical regulation that would apply to SEFs and SB SEFs.[24] We hope the CFTC and the SEC will continue to work together to develop identical regulations, wherever possible, and harmonized regulations, in other cases, to allow these markets to develop efficiently and without fragmentation.

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[23] *See* Section 1(b) of Executive Order 13563, cited above in note 10.

[24] All of the substantive requirements adopted in the Core Principles applicable to SB SEFs will also apply to SEFs, with one exception. Compare Dodd-Frank § 733, adding new CEA § 5h(f) with Dodd-Frank § 763(c), adding new Exchange Act § 3D(d). A SB SEF will need to have the capacity to disseminate trade information with respect to transactions executed on or through the SB SEF. New Exchange Act § 3D(d)(8)(B).

The SEF Core Principles place three additional requirements on SEFs that are not required by the SB SEF Core Principles:

1) a SEF's rules must provide that when a SD or MSP enters into or facilitates a swap that is subject to the clearing mandate, the SD or MSP is responsible for complying with the execution mandate (new CEA § 5h(f)(2)(D);

2) a SEF will need to adopt position limitations or position accountability for speculators, if necessary and appropriate (new CEA § 5h(f)(6); and

3) records related to cross-currency rate swaps that are required by SEF Core Principle 10 must be kept open to inspection and examination by the SEC (new CEA § 5h(f)(10)(a)(iii).

4. Specific Refinements to the CFTC Proposal to Help Promote SEF Trading

MarketAxess respectfully proposes certain refinements to the CFTC's proposed rules in order to reduce significant barriers to entry, increase the pro-competitive elements of the proposal and thereby help promote swap trading on SEFs. By streamlining some of the regulatory burdens associated with being a SEF, the CFTC will ensure that non-exchange entities like MarketAxess that already provide competitive, efficient marketplaces for securities and swaps, will be able to continue to provide this customer service consistent with the goals of Dodd-Frank.

A. The SEF Auditing Requirements Should be Made More Efficient.

1. Individual Annual SEF Audits Are Unwarranted.

The CFTC's Proposed Rule 37.205(c) would require a SEF to audit annually its members' and market participants' compliance with audit trail requirements. The CFTC does not explain why it believes an annual audit is necessary or appropriate in this area. We question whether any audit trail audit of each market participant is warranted, let alone an annual audit; the CFTC should be able to monitor SEF audit trails effectively without this requirement.

If the CFTC, on reconsideration, disagrees, we recommend that the CFTC require a single entity/SRO such as the NFA or FINRA to audit each SEF market participant on a regular interval for compliance with the SEF audit trail requirements. This audit could cover each market participant's trading on every SEF it uses. Using a single entity such as the NFA or FINRA would ensure that this audit is conducted efficiently and would avoid increasing regulatory costs of doubtful utility on our customers and those of each other SEF.

2. SEFs Should Not Be Required to Monitor Market Participant Activity Outside the SEF.

Proposed Rule 37.401 would require a SEF to: "[m]onitor and evaluate general market data," "have the capacity to conduct real-time monitoring of trading and comprehensive and accurate trade reconstruction," and have processes to detect and prevent trading abuse. The CFTC may have intended that this Proposed Rule would be limited to a SEF's oversight of market participant activity on that SEF. But the text of the draft rule is not clear on this point. Instead, as written, the rule could require a SEF to have access to and audit all of its members' activities on a continuous basis, including trading on other SEFs or DCMs.

Consistent with SEF Core Principle 4 and Proposed Rule 37.400(a), a SEF's oversight should be limited to trading and trade processing "on or through [its] facilities." CEA § 5h(f)(4)(A). Although new CEA § 5h(f)(4)(B), which will require a SEF to "[m]onitor trading in swaps...", is not explicitly limited to activity conducted through that SEF, the CFTC need not extend a SEF's duties to include monitoring "general market data" or monitoring all swap market activity generally. It is not clear how a SEF could even "prevent manipulative activity" not connected to its platform. Proposed Rule 37.401 must limit a SEF's oversight obligations to activity conducted pursuant to its rules and not create duties that would require a SEF to stretch its oversight to cover activity that occurs on the SEF's competitors or in the private bi-lateral

market.

B. Disciplinary Procedures Should Be Streamlined to Feature a Summary Fine Structure.

Proposed Rule 37.206 sets forth extensive disciplinary procedures for SEFs that focus mostly on protecting the rights of market participants. Under the proposal, after a staff investigation is completed (pursuant to Proposed Rule 37.203(f)(3)), a review panel would review the report and determine whether the matter should be adjudicated. A hearing panel would then adjudicate the matter in accordance with extensive procedures addressing: required notice of charges, right to representation, right to answer charges, treatment of admissions or failure to deny charges, the right to a hearing, settlement offers, hearing procedures, rending decisions, rights of appeal, and final decisions. The procedures and protections in the Proposed Rules are akin to a full agency administrative adjudication process. The Proposed Rule would require sanctions commensurate with violations committed.

The CFTC requests comment on whether the detailed disciplinary procedures are appropriate for SEFs, or whether SEFs should utilize instead a more streamlined disciplinary process that features a robust staff summary fine program. Proposed Rules at 1227. The proposed requirements extend well beyond the SEF Core Principles and the intent of Congress. Under Dodd-Frank, the only mention of discipline in all of the SEF Core Principles simply will require a SEF to monitor trading through disciplinary practices and procedures. Dodd-Frank § 733; adding new CEA § 5h(f)(4)(B).[25] In lieu of Proposed Rule 37.206, MarketAxess requests that the CFTC adopt a rule adopting the alternative summary fine structure suggested by the CFTC in the preamble as much more compatible with the SEF business model.

C. The CFTC Should Clarify What "Impartial Access" Means and Define "Independent Software Vendor."

Core Principle 2 will require a SEF to provide market participants with impartial access to its platforms. Dodd-Frank § 733, adding new CEA § 5h(f)(2)(B)(i). The CFTC has proposed Rule 37.202 to implement this requirement.

1. The CFTC Should Clarify "Impartial Access" for ECPs.

Proposed Rule 37.202(a)(1) would require a SEF to provide any ECP with impartial access based upon "impartial" and "transparent" criteria that are applied in a "fair and non-discriminatory manner." The meaning of the term "impartial" is unclear and neither Dodd-Frank nor the Proposed Rules define "impartial access." The CFTC states that the purpose of the proposed impartial access requirements is:

> "to prevent a SEF's owners or operators from using discriminatory access requirements as a competitive tool against certain participants. Access to a SEF should be determined, for

[25] In contrast, DCM Core Principle 13 requires a DCM to have and enforce disciplinary procedures that authorize the Board to discipline, suspend or expel members or market participants that violate the DCM's rules.

example, on the SEF's impartial evaluation of an applicant's disciplinary history and financial and operational soundness against objective, pre-established criteria." Proposed Rules at 1223.

MarketAxess supports the CFTC's intent and believes that Congress intended SEFs to provide access to market participants based on objective criteria. This intent is also consistent with the IOSCO Principles that state that regulators internationally should ensure that trading platform access is "fair and objective." IOSCO Report on Trading of OTC Derivatives, p. 14, n. 28 (Feb 2011) ("IOSCO Report").[26] To ensure that the CFTC's intent is realized, MarketAxess requests that the CFTC revise Proposed 37.202(a)(1) as follows: "Criteria that are ~~impartial,~~ transparent~~,~~ **and objective** and **are** applied in a fair and nondiscriminatory manner;".

2. The CFTC Should Define "Independent Software Vendor" and Permit a SEF to Limit Access in Certain Situations.

Proposed Rule 37.202(a) would require a SEF to provide impartial access to market services to any "independent software vendor." Neither this Proposed Rule nor existing regulations defines "independent software vendor" and this term does not appear in Dodd-Frank or the CEA. The CFTC notes in the preamble that aggregators of transaction data, as well as smart order routers and trading software companies that develop front-end trading applications, would be independent software vendors. Proposed Rules at 1222, n. 53. The CFTC appears to envision "independent software vendors" reporting publicly and/or aggregating pre-trade data. Proposed Rules at 1222, n. 53.

A mandate that SEFs provide independent software vendors with impartial access extends beyond, and is not required by, Dodd-Frank (including § 733 which adds new CEA §§ 5h(f)(2)(A)(ii) and (B)(i)).[27] *But see* Proposed Rules at 1222-23 (incorrectly stating that Core Principle 2 requires SEFs to provide impartial access to "independent software vendors"). Furthermore, pre-trade data is not required to be publicly reported under Dodd-Frank.[28] If SEFs or market participants want to make pre-trade information available to a wider audience (including indicative quotes), they can provide such data to an "independent software vendor" or any other information service provider at their discretion.[29] Market participants may choose not

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

[27] Core Principle 2 will require a SEF to "establish and enforce compliance with any rule of the [SEF], including any limitation on access to the [SEF]." Dodd-Frank § 733, adding new CEA § 5h(f)(2)(A)(ii).

Core Principle 2 will also require a SEF to "establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market." Dodd-Frank § 733, adding new CEA § 5h(f)(2)(B)(i).

[28] Proposed Parts 43 and 45 already require a SEF to report certain data to an SDR and require that some of this data be publicly disseminated. An additional rule requiring access to such post-transaction data is not necessary.

[29] For an RFQ platform, pre-trade information will be even more limited because the person requesting the quote would determine how many entities receive the request.

to provide pre-trade transparency in order to preserve the confidentiality of their business strategies and interests, a policy that Dodd-Frank supports.

To the extent the CFTC seeks to require a SEF to grant access to qualified parties interested in a SEF's data, the CFTC must permit a SEF to restrict access where the party seeking access would use such direct access to provide a competitive advantage to another SEF or DCM. For example, an "independent software vendor" might be an affiliate of a competing SEF or DCM, or may just be interested in selling the data to a competing SEF or DCM. A SEF should be able to restrict access to such parties. If the CFTC intends that the term "independent" address this situation, we ask that this intention be stated expressly in any final rule.

3. SEFs Should Be Permitted to Rely Upon a Representation That a Participant Seeking Access is an ECP.

Proposed Rule 37.202(a)(2) would require a SEF to provide "a process" for participants to confirm their status as ECPs prior to being granted access. The CFTC should explicitly permit a SEF to rely on written or electronically signed representations by a participant regarding its status as an ECP. SEFs may then adopt rules to require that the participant notify the SEF immediately of any change to its status after the participant makes this representation.

4. Requiring Comparable Fees for Comparable Access Should Permit Volume Discounts and Other Pricing Arrangements.

Proposed Rule 37.202(a)(3) would require a SEF to provide "comparable fees" for "comparable access." The CFTC should make clear that the Proposed Rule would permit SEFs to provide their market participants with volume discounts and other pricing arrangements so long as such discounts and arrangements are based upon objective criteria that are applied uniformly.

D. The Proposed Rules Setting Forth the Duties of a Chief Compliance Officer ("CCO") Are Excessive and Unclear.

1. The Proposed Rules Setting Forth the Duties of the CCO are Overly Broad; They Would Usurp the Authority of Management and the Board.

Ironically, Dodd-Frank did not require DCMs to have CCOs. Nonetheless, MarketAxess accepts that Congress has required, for no stated reason, SEFs to have this higher statutory burden than DCMs. However, we believe the Proposed Rules would reach much too far and would give CCOs extensive responsibilities that, in many cases, could have the CCO effectively running the SEF. CCOs should be important employees or officials, but they should not and cannot be put in a position of being the de facto head of the SEF.

CCOs cannot and should not be required to be responsible for overall business operations. Oversight of certain aspects of a SEF's activities must be the responsibility of risk management and operations personnel. The CFTC must carefully balance regulatory compliance requirements with operational and management responsibilities to ensure that SEFs are properly regulated entities, without diminishing their commercial viability. Striking this balance is critical to promoting SEF trading.

For example, Proposed Rule 37.1501(f)(1) would require the Board to review the CCO's annual compliance report and would expressly prohibit Board members and the SEF's senior official from requiring the CCO to make any changes to the report. Although Proposed Rule 37.1501(e)(7) requires the CCO to certify that its annual compliance report is accurate and complete, the Proposed Rule effectively strips the Board and management of their ability to ensure the CCO has properly performed his job. The Board or management could not require the CCO to correct the report if the Board or management believes the CCO is wrong.

These proposed requirements place the CCO's judgment ahead of that of the Board. The CFTC appears to have a misplaced belief that CCOs will be more effective, independent, and reliable than Boards of Directors, which have independence requirements under separate proposed rules and are bound by common law and statutory fiduciary duties of loyalty and care to serve the company's interests. The CFTC should modify Proposed Rule 37.1501(f)(1) to ensure that CCOs are properly supervised by, and accountable to, management and the Board.

Proposed Rule 37.1501(e)(6) would require the annual compliance report to identify any objections to the report by those persons who oversee the CCO. This rule would be unnecessary if others could correct the CCO's annual report. The CFTC should reconsider this Proposed Rule.

Proposed Rule 37.1501(e)(7) would require the CCO to certify that the annual compliance report is complete and accurate to the best of his or her knowledge and reasonable belief. This requirement could be read to impose strict liability on the CCO where an annual compliance report contains even a minor and insignificant inaccuracy. The CFTC should clarify this Proposed Rule by requiring the CCO to certify that the annual compliance report is "materially" accurate and complete.

The Proposed Rules would also require a majority of the Board to approve appointment and compensation (Proposed Rule 37.1501(c)(1)) and dismissal of the CCO (Proposed Rule 37.1501(c)(3)). These requirements go well beyond the statutory mandate and would effectively place the CCO at the same level as the SEF's senior officer.[30] The CFTC's approach is ill-advised and could impede effective management and operation of a SEF. The CFTC should modify the Proposed Rule to permit management involvement in determining the CCO's compensation and in dismissing the CCO when necessary.

Similarly, Proposed Rule 37.1501(d)(4), repeating the statutory language in new CEA § 5h(f)(15)(B)(v), would require the CCO to "ensure" that the SEF complies with the CEA and applicable rules. Requiring the CCO to "ensure compliance" may be read to place the CCO effectively ahead of all other senior managers. The CFTC should clarify that "ensuring compliance" means that the CCO must establish policies, monitor compliance, and report or remedy issues as directed by the Board and senior management.

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[30] Although the Proposed Rules permit the senior officer to exercise some of the responsibilities otherwise given to the Board, the proposal could be read to elevate the CCO over other senior officials who may supervise the CCO. Furthermore, if the CFTC intends to permit the senior officer to exercise some CCO oversight powers that are otherwise given to the Board, the CFTC should allow the senior officer to exercise all of those powers, including the removal of the CCO.

It is puzzling why the CFTC assumes that creating a position with the title of Chief Compliance Officer means the person filling that position will be more effective than other senior managers who are ultimately responsible for the viability of the company. The CFTC's approach appears to assume that regulatory compliance and sound business management are conflicting priorities. We believe this is fundamentally incorrect.

2. SEFs Should Not Be Forced to Waive Unilaterally and Unconditionally Attorney-Client Privilege Over Matters Relating to Compliance.

Proposed Rule 37.1501(g) would impose extensive recordkeeping requirements that would include advice a CCO receives regarding compliance, some of which could be privileged legal advice. The Proposed Rule would require records to be maintained in accordance with Rule 1.31, which states that all records would be open to inspection by the CFTC and the U.S. Department of Justice. Proposed Rule 37.1501(g)(2).

The Proposed Rule should provide an exception for legally privileged materials. The CFTC notes in the preamble that it believes it is not appropriate for a SEF to assert privilege over matters within the purview of the CCO. Proposed Rules at 1232, n. 103. This blanket assertion is not mandated by Dodd-Frank. Both the statute and the CFTC's Proposed Rules impose substantial duties on a SEF and a CCO that create potential liability for the company as well as the CCO personally. It is unreasonable for the CFTC to take the position that a CCO should not be able to receive privileged advice from counsel in an effort to comply with these new, complex, and uncertain rules.[31] The CFTC has not proposed to impose similar disclosure obligations for DCMs or otherwise suggested that DCMs (or any other registered entities) may not assert attorney-client privilege, and there is no clear rationale for such disparate treatment.

E. The CFTC Should Determine Which Swaps Are Made "Available for Trading."

Dodd-Frank will generally require that swaps subject to the clearing mandate be executed on a DCM or on a SEF so long as a DCM or SEF "makes the swap available to trade."[32] See Dodd-Frank § 723(a)(3); adding new CEA §§ 2(h)(1) and (8). The CFTC should determine what swaps are made available for trading and, thus, required to be executed on a SEF or DCM. The CFTC should base this determination on actual market data (which is not yet available, as noted by the SEC in its corresponding release).

It is unclear from the Proposed Rules how the "made available to trade" determination will be made. Proposed Rule 37.10 would require each SEF to review annually (or more

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[31] Proposed Rule 37.1501(b)(2)(ii) would prohibit the CCO from being a member of the SEF's legal department or its general counsel in order to limit privilege claims. This proposed requirement could prohibit a smaller SEF from structuring its internal management in the most efficient manner. We hope the CFTC will reconsider.

[32] We assume that the CFTC uses the term "available for trading" rather than the statutory term "available to trade" for grammatical reasons. If the CFTC intended the language in the Proposed Rule to have a different meaning than the statutory language, the reason for the change should be made clear in the final rules.

frequently as requested by the CFTC) whether that SEF "has made a swap available for trading." In making this assessment, the SEF could take into consideration the frequency of transactions and open interest in this or similar swaps and any other factor the CFTC requests. Given that the frequency of transactions and open interest will vary by SEF, it seems that one SEF could make a different assessment than another SEF with respect to the same kind of swap. But Proposed Rule 37.10(c)(1) would require that all SEFs "treat the swap as made available for trading" if at least one SEF has made that same swap or an economically equivalent swap available for trading.

We fear this rule could be read as requiring all SEFs to list all swaps that are made available for trading by any SEF. Such a requirement is not mandated, or even contemplated, by Dodd-Frank. The CFTC should not require a SEF to list particular swaps. A SEF should select which swaps are appropriate for that SEF to list. Proposed Rule 37.10 should be revised to clarify that the CFTC will determine when a swap is "available for trading" and Proposed Rule 37.10(c) should be withdrawn.

F. CFTC Swap Approval or Self-Certification Procedures To List Swaps Should Be Extended to All Substantially Similar Swaps on a SEF.

Proposed Rule 37.4 would provide procedures for listing swaps on a SEF. The Proposed Rule incorporates the detailed approval and self-certification procedures in Proposed Rules 40.2 and 40.3. The Proposed Rules appear to contemplate that all swaps must be either self-certified or submitted for approval individually, even if several swaps are substantially similar.

The CFTC's approval of a specific swap that is voluntarily submitted for approval should be extended to substantially similar swaps in order to use SEF and CFTC resources efficiently. To the degree that the terms and conditions of multiple swaps in a swap category are substantially similar, the CFTC's approval of one of those swaps should be treated as an approval of the other similar swaps in that category. Similarly, a SEF should be able to self-certify through one certification a set of swaps that are substantially similar. For example, a SEF's self-certification or CFTC approval of a swap on broad-based index A with a maturity of five years and series 1 should cover other broad-based swaps based on index A with different series and/or maturities as well as any revisions made to the components of the referenced index of those swaps. This would ensure efficient use of SEF and CFTC resources.

G. SEFs Should Document in Confirmations Only the Data They Have When a Swap is Executed.

Proposed Rule 37.6 would include as a part of a transaction entered into on or pursuant to the rules of a SEF written documentation that memorializes all of the transaction's terms. This documentation would serve as the confirmation for that swap and would need to take place at the same time as execution.

The CFTC states that this rule "would require that parties have full written agreement on all terms of a swap at the same time as execution." Proposed Rules at 1218. A SEF may only include the terms in its possession. In proposed Part 45, the CFTC makes clear that a SEF is only responsible for sending the swap creation data in the SEF's possession to the SDR. Consistent with this approach, MarketAxess requests that the CFTC clarify in the final rule that a

SEF is only responsible for including those terms in a confirmation that are in the SEF's possession at the time of execution.

For block trades and any other Permitted Transactions that may be entered into pursuant to the rules of, but not on the trading system of, the SEF, the SEF would not have any of the transaction's terms in the SEF's possession at the time of execution. The CFTC may have only intended that this rule apply to swaps executed on a SEF's trading platform.[33] MarketAxess asks that the CFTC revise Proposed Rule 37.6 to make clear that a SEF would only be responsible for producing a confirmation for swaps entered into on, and not just pursuant to the rules of, a SEF.

We also ask that the CFTC confirm our understanding that the SEF would be responsible for sending the confirmation to the executing parties to the swap and the SDR. A requirement that the SEF send confirmations to sub-accounts would be unnecessarily resource intensive and operationally difficult.

5. Requests for Clarification and Technical Changes

A. Several Provisions in the Proposed SEF Application Rules Should be Amended or Clarified.

1. It Is Not Clear Whether Amendments to the SEF Application Are Required on an Ongoing Basis.

Proposed Rule 37.3(a)(6) would require any information in a SEF application that is or becomes inaccurate for any reason to be updated by filing an amendment. We assume, but are not sure, that the CFTC does not intend 37.3(a)(6) to require amendments after an application has already been approved. Note that the SEC's proposed SB SEF rules would require an annual filing of the SB SEF application to make sure that its registration remains current. The CFTC should clarify this point in its final rules.

B. Prior Notice Requirements for Certain Transfers of Equity Ownership Should Be Clarified.

Proposed Rule 37.5(c) would require a SEF to provide notice to the CFTC of any equity ownership transfer greater than 10 percent. A SEF would also be required to certify that, after a transfer of 10 percent or more of the equity interests, the SEF meets all of the requirements of § 5h of the CEA and the underlying regulations.

1. The CFTC Should Make Clear Whether the Notice Requirement for a Transfer of Equity Ownership Applies to a Transfer of Equity Ownership of a Company That is a Parent Company of a SEF.

It is unclear whether the requirements in Proposed Rule 37.5(c) would apply to transfers

[33] This would be consistent with the CFTC's statement that "[f]or swaps executed on a SEF, the SEF will provide the counterparties with a definitive record of the terms of their agreement, which will serve as the confirmation of the swap." Proposed Rules at 1218.

of 10 percent or more of the equity of a company that is the parent company of a registered SEF. By comparison, Proposed Rule 37.19 would provide look-through rules for certain Board of Directors requirements and limitations on the exercise of voting power by members of a SEF where the registered SEF is a subsidiary company. There is no corollary requirement that would make Proposed Rule 37.5(c) applicable to a parent company of a registered SEF. The CFTC should make clear in the final rules whether the reporting requirements for certain ownership transfers apply to transfers of ownership in a company that is a parent of a registered SEF.

2. The Proposed Reporting Requirements for Transfers of Equity Ownership Should Not Apply to Publicly Traded Companies.

Proposed Rule 37.5(c) should not apply to public companies (or to transfers of equity in connection with a company becoming public). Transfers of equity ownership of public companies do not implicate the control and influence concerns the CFTC seeks to address.[34] An exception for public companies would also be consistent with Proposed Rule 37.19(d)(3), which would provide an exception for public companies to the voting power restrictions that would otherwise apply under Proposed Rule 37.19(d)(2). Under that proposal, where a parent company is publicly traded, the parent company must comply with voting requirements promulgated by the SEC and the exchange on which the company is listed, apparently in lieu of the voting restrictions in Proposed Rule 37.19(d)(2).[35]

By comparison, SEC rules require shareholders, not companies, to report on Form 13D acquisitions of interests that constitute more than 5 percent of a registered security. Form 13D is required to be filed within 10 days of such acquisition, not prior to acquisition, which could influence the price of the stock.

C. The Proposed Rule Regarding Permissible Uses of Data Should be Clarified.

Proposed Rule 37.7 would prohibit a SEF from using, for business or marketing purposes, any proprietary data or confidential information it receives or collects for the purposes of its regulatory obligations. The CFTC states that the underlying policy is to protect the privacy of customer information. Proposed Rules at 1218, n. 34.

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[34] The preamble describes the CFTC's concerns about the potential for improper influence over the operations of a SEF by a person that owns greater than 10 percent. Proposed Rules at 1217.

The pre-acquisition reporting requirements proposed in 37.5(c) could impact the price of a publicly traded stock and could violate SEC and exchange rules.

[35] If the CFTC does impose requirements similar to those in Proposed Rule 37.5(c), the percentage of equity transferred should be measured based upon the percentage received by any single transferee (and its affiliates), rather than the percentage transferred by the SEF (or other transferors). For example, if MarketAxess, which is publicly traded, wanted to issue additional shares to the public that would constitute, in the aggregate, more than 10 percent of the equity interest of the company, it should not be subject to any reporting or approval requirements. Any such issuance of shares would be reported in filings with and subject to regulation by the SEC. New entities seeking to become SEFs will need access to as many sources of capital as possible. There is no reason for the CFTC to impose additional requirements on companies that seek to tap public markets.

MarketAxess considers its customers' privacy to be paramount and asks that the CFTC clarify that a SEF could use, for business or marketing purposes, any data and information it receives, so long as doing so does not disclose the identity of any market participants or members of the SEF. Disclosure of the identity of a user also should be permitted with the written consent of the market participants or members.

The CFTC states that this Proposed Rule is "intended to protect market participants' information provided to a SEF for regulatory purposes from its use to advance the commercial interests of the SEF." Proposed Rules at 1218, n. 34. A SEF may not be able to distinguish whether data or information received was for the purpose of complying with its regulatory obligations or for some other purpose. Also, if the CFTC intends to preclude a SEF from using data it receives for internal use to identify ways to better serve its customers, we ask that the CFTC reconsider.

D. Several Changes and Clarifications Should be Considered to the Proposed Rules for Permissible Execution Methods.

1. Comments on Requiring RFQ to Be Sent to at Least Five Participants.

Proposed Rule 37.9(a)(ii) would define an acceptable SEF RFQ system. The Proposed Rule would require requests for quote to be sent to at least five market participants. Although MarketAxess could comply with the proposed requirement, this requirement is not appropriate or necessary. MarketAxess' customers may want the flexibility in some circumstances to send requests to as few as one other market participant if they so choose (which is consistent with the SEC's interpretation of the statutory requirements with respect to security-based swaps).[36] We fully support our customers' desire for flexibility. We urge the CFTC to be guided by the public comments of our customers, and consistent with the SEC's approach, permit market participants to submit a RFQ to one other market participant.

We would also note that the CFTC's contemplated use of indicative quotes described in Proposed Rules 37.9(a)(1)(ii) and (b)(2) is a further indication that the requirement to send requests to at least five market participants is unnecessary. If a requester submits an RFQ and receives five responses, along with one indicative quote at a better price than the five requested responses, the requester should be permitted to send another request for quote only to the party that posted the indicative quote.

We request that the CFTC confirm that, to the extent requests must be sent to multiple parties, the requestor would not be required to take the best price. In cleared swaps, a market participant may want to take a request that is not the best price if the best price response only would have been a partial fill of the requested amount. For uncleared swaps, a market participant must take into account counterparty credit risk, which could affect its decision whether to take the "best" price, but the worst "credit" offered.

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[36] Registration and Regulation of Security-Based Swap Execution Facilities, 76 Fed. Reg. 10948, 10953-54 (Feb. 28, 2011).

2. Responses to RFQs Should Not Be Required to Be Transparent.

The CFTC requests comment on whether SEFs should be required to make responses to RFQs transparent to all market participants and if so, whether this should be done prior to, at the time of, or subsequent to, execution. We understand that our customers prefer not to make RFQs and responses public in order to preserve the confidentiality of their business strategies and interests, a policy that Dodd-Frank supports. If MarketAxess' customers decide that they want the ability to make any response to RFQs public, then MarketAxess will adopt trading protocols and rules to respond to its customers' demands.

3. Treatment of Resting Bids or Offers Should Be Clarified.

Proposed Rule 37.9(a)(1)(ii)(A) would require that "[a]ny 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." We have two concerns with respect to this proposal. First, we would note that the concept of "resting bids or offers" does not apply to RFQ platforms, which typically do not have executable resting bids or offers (an RFQ, after all, is a "*request*" for a quote; the analogous point could be made with respect to systems that stream "indicative" quotes).

Moreover, it is not clear what the CFTC means when it prescribes that resting bids or offers be "taken into account." We believe that having the SEF's software communicate such resting bids or offers to the requester should be sufficient. What the requester decides to do with that additional information should be left to the discretion of the requester.

4. The Definitions of "Required Transaction" and "Permitted Transaction" Should Be Harmonized.

Proposed Rule 37.9(a)(1)(iv) would define Required Transactions as transactions that are "subject to the execution requirements under this Act and are made available for trading pursuant to § 37.10, and are not block trades."[37] We believe the CFTC intended, in proposing rule 37.9(a)(1)(v), to define all other transactions as Permitted Transactions. However, the proposed definition of Permitted Transaction uses terminology that differs from the definition of Required Transaction. For consistency which would ensure there are no gaps between these definitions, MarketAxess requests that Proposed Rule 37.9(a)(1)(v) be revised to read: "(v) Permitted Transactions means all transactions that are not Required Transactions."

E. <u>SEFs Should Not Be Required to Allow Participants to Make Indicative Quotes Accessible to All Participants.</u>

Proposed 37.9(b)(2) would require a SEF, when offering trading services to facilitate Required Transactions, to provide market participants with the ability to post both firm and

[37] We assume the cross-references to 37.10 in the definitions of Required Transaction and Permitted Transaction will incorporate by reference the rule that clarifies that the CFTC will determine which swaps are made available for trading.

indicative quotes on a centralized electronic screen accessible to all market participants who have access to the SEF. The market participant would elect whether the quotes would be shown on the screen. Proposed Rules at 1219.

We agree with Commissioner Sommers that this requirement goes beyond what Dodd-Frank requires and may limit competition. As Commissioner Sommers notes, if the CFTC's proposal is adopted as proposed, applicants that wish to offer RFQ services without this functionality would be excluded, which would limit competition. We request that the CFTC withdraw Proposed Rule 37.9(b)(2), which would be consistent with Commissioner Sommers' alternative language. Proposed Rules at 1259.

F. The CFTC Should Not Consider Requiring Certain Trading Methods for Particular Swaps.

Proposed Rule 37.9(b)(4) states that the CFTC reserves the discretion to require a SEF to provide its participants "a different trading method for a particular swap." The CFTC requests comment on whether the SEF provisions in Dodd-Frank support a requirement that swaps that meet a certain level of trading activity be limited to trading through Order Books and whether an analysis of that issue should be done on a product or asset-class basis. Preamble at 1221.

We believe very strongly that nothing in Dodd-Frank supports a requirement that certain swaps be limited to trading on SEFs through Order Books based upon trading activity. If customers believe certain swaps should be traded through an Order Book, SEFs will satisfy that demand. The CFTC should not speculate on how the markets will evolve and should not impose any such requirements at this time. The CFTC's Proposed Rule 37.9(b)(4) and its suggestion that it may require a SEF to provide execution through a specific execution method (e.g., an Order Book System) would create uncertainty about how SEF markets could be structured. SEFs need stability, certainty, and clarity, as would any newly-regulated enterprise.[38] Once a SEF has started operations, absent a showing of abuses the CFTC thereafter should not be able to ban certain execution methods.

G. The Rule Requiring SEFs to Identify Swaps That Will Not Be Cleared Needs to be Clarified.

Proposed Rule 37.11(a) provides that a SEF may choose to offer for execution and trading uncleared swaps that: are not subject to the clearing mandate; are subject to an exception to the clearing mandate; or are not made available for trading (under Proposed Rule 37.10). We believe that the CFTC intends, in proposing rule 37.11(b), to require that a SEF identify to market participants the reason why a particular swap offered for trading on the SEF is not a Required Transaction. This would help a market participant to identify whether it is eligible to

[38] The IOSCO Report notes that more structured platforms *can* be appropriate for trading more liquid products. IOSCO Report at 48 (emphasis added). However, the report emphasizes the need for flexibility and does *not* suggest that a particular type of platform be *required* for more liquid swaps. Until the CFTC has experience regulating swap markets, it is not possible to know what types of swaps listed on SEFs, if any, will have sufficient liquidity to be traded on a more structured market or what type of additional structure might be appropriate (perhaps something less than an Order Book).

enter into the swap as a Permitted Transaction. As proposed, Rule 37.11(b) could be read to require that all transactions described in Proposed Rule 37.11(a) only be executed bilaterally and not on a SEF. We do not believe this was the CFTC's intent.

The CFTC should clarify its intent by revising Proposed Rule 37.11(b) as follows:

> "(b) A swap execution facility that chooses to offer **a Permitted Transaction for** ~~to facilitate bilateral~~ trading ~~for swaps detailed in paragraph (a) of this section~~ must ~~clearly~~ identify to market participants ~~that~~ **which part of paragraph (a) of this section applies to** the particular swap. ~~is to be executed bilaterally pursuant to one of the applicable exemption from execution and clearing.~~ "

H. Core Principle 2: Several Provisions in the Proposed Rules Implementing Core Principle 2 Should be Clarified or Modified.

1. Proposed Rules Relating to the Clearing Mandate Should Be Clarified.

(a) A SEF Cannot Be Responsible for Enforcing Mandatory Clearing Requirements.

Proposed Rule 37.201(b)(6) would require SEFs to adopt and enforce rules prescribing mandatory clearing requirements. Dodd-Frank will make the parties to a swap responsible for submitting for clearing those swaps the CFTC determines are "required to be cleared." New CEA § 2(h)(1)(A). Clearing occurs after the SEF has already fulfilled its primary function – facilitating the swap transaction. The CFTC should withdraw Proposed Rule 37.201(b)(6).

Proposed Rule 37.200(d) would require a SEF's rules to provide that swap dealers ("SDs") and major swap participants ("MSPs") be responsible for complying with the execution mandate.[39] The CFTC should revise the Proposed Rule to clarify that the requisite SEF rules would only apply to swaps executed pursuant to the rules of that SEF. A SEF should not be responsible for policing swaps executed on another SEF.

(b) The Choice of Which DCO Will Clear a Swap Should Be Made Prior to Execution of the Swap.

New CEA § 2(h)(7)(E) provides that when a clearable swap (whether required to be cleared or not) is entered into by a SD or MSP with a counterparty that is not a SD or MSP, the end user has the right to select the DCO that will clear the swap. For Required Transactions, a SEF's rules should require the party that is eligible to choose the DCO, to make that choice on the SEF's trading system before a trade is executed, so that the SEF knows where to send the trade upon execution. Any Proposed Rule should be flexible and should permit the SEF to determine the best way for the parties to notify the SEF, such as making identification of the

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[39] Proposed Rule 37.207 is identical to Proposed Rule 37.200(d) and is unnecessary.

DCO and the clearing member fields that a customer must complete when entering an RFQ.[40]

(c) A SEF Should Be Able to Send a Trade to a DCO Via an Affirmation Hub.

The Proposed Rules need to make clear that a SEF can send a trade to the DCO via an affirmation hub. This will facilitate efficient use of SEF resources and ensure third party services providers that already provide similar services in financial markets are permitted to compete in the swaps marketplace. In particular, in the event that the CFTC determined to mandate by regulation a particular trade flow model that did not allow for submission of trades via an affirmation hub, SEFs would need to undergo the added expense of building internal functionality to replicate these services, including with respect to trade re-allocation. Beyond the specific costs of these requirements, the CFTC also should consider the time factor associated with meeting these requirements and the opportunity cost to SEFs of needing to shift their IT focus (away from other areas not already being adequately addressed by third party service providers).

Finally (and most importantly from our customer service perspective), our clients have consistently expressed a strong preference for use of affirmation hubs. Many of our institutional investor clients, who may trade on multiple platforms, prefer to undertake their trade allocation process to their various internal funds in one location provided by an affirmation hub rather than needing to undertake this process on every platform where they conduct trading.

2. Proposed Rules Relating to SEF Enforcement Programs Should Be Clarified.

(a) SEFs Do Not Need a Mandate to Evaluate Compliance Resources.

Proposed Rule 37.203(c)(2) would require a SEF to "formally evaluate the need to increase its compliance resources and staff." It is unclear what type of process would satisfy the requirement for a "formal" evaluation and an evaluation could result in an increase or decrease in compliance resources. The CFTC should amend the rule by deleting the word "formally" and making clear that an annual review could result in an increase *or decrease* as a result of the annual evaluation.

(b) A SEF Should Be Able to Delegate Investigations to an RSP and Reports Should Be Submitted to the CCO.

Proposed Rule 37.203(f) would require investigations of potential rule violations. As drafted, the rule states that a SEF's "compliance staff" must conduct these investigations and produce the accompanying reports. The use of the term "compliance staff" creates ambiguity as to whether this responsibility can be delegated. A SEF should be permitted to delegate these investigations to an RSP that is handling the SEF's rule enforcement program. Consistent with

[40] Nothing in the CFTC's proposal requires a SEF to provide connectivity to every DCO that may clear a swap. The CFTC should confirm this policy determination.

the other sections of Proposed Rule 37.203, the references to "compliance staff" in 37.203(f) should be replaced with "swap execution facility" to make clear that these investigations can be delegated.

Proposed Rule 37.203(f)(3) would require SEFs to "submit" investigation reports where compliance staff believes there has been a rule violation. The Proposed Rule does not specify to whom these reports must be submitted. Consistent with proposed rules under Core Principle 15, it would appear the investigation reports should be submitted to the CCO. The CFTC should clarify these responsibilities.

(c) A Warning Letter Can Be Considered a Sanction.

Under Proposed Rule 37.203(f)(5), a warning letter is not a penalty or an indication that a finding of a violation has been made. However, Proposed Rule 37.205(c)(2) indicates that a warning letter may be an appropriate sanction for violating rules related to the audit trail requirement. Proposed Rule 37.206(o) also indicates that a warning letter may be a sanction. The CFTC should adopt a consistent approach that a warning letter can be a penalty or indication of a finding of a violation in all SEF contexts.

I. Core Principle 3: Demonstrating That a Swap is Not Readily Susceptible to Manipulation Must Be a Flexible Requirement.

Core Principle 3 will require that a SEF only permit trading in swaps not readily susceptible to manipulation. Proposed Rule 37.300 repeats the statutory language from Core Principle 3. Proposed Rule 37.301(a) would require a SEF to demonstrate compliance with Proposed Rule 37.300 by self-certifying or voluntarily submitting for CFTC approval any new swap in accordance with proposed amendments to part 40, a process that involves substantial diligence. In addition, Proposed Rule 37.301(b) would require a SEF to provide the information requested in Appendix C to the proposed DCM regulations. Appendix C would require, among other things, substantial diligence to demonstrate that a swap is not readily susceptible to manipulation.

The heavy documentary burden that Proposed Rule 37.301(b) would impose on a SEF to justify its decision to self-certify a swap it wants to list for trading is unnecessary and will impose substantial product introduction costs on swaps and stymie the congressional goal of promoting swap trading. Proposed Rule 37.301(b) should be withdrawn.

Further, where a DCO accepts a swap for clearing, there should be a presumption that Core Principle 3 is satisfied with respect to that type of swap. Rules proposed under Parts 39 and 40 would require DCOs to perform diligence prior to accepting a swap for clearing and to follow risk management procedures when introducing a new product. A SEF should be permitted to rely upon the fact that a DCO has already undertaken substantial diligence and the CFTC has not disturbed the DCO's decision to accept the swap for clearing. This presumption should apply both for swaps that the CFTC has approved and for swaps that a DCO has self-certified and has accepted for clearing.

J. Core Principle 4: SEFs Should be Required to Act in Good Faith With Respect to Requests for Information-Sharing Agreements.

Core Principle 4 will require a SEF to establish and enforce rules for monitoring trading and trade processing.

Proposed Rule 37.403 would require that, for cash-settled swaps relying on a price or index derived from another SEF, the SEF must have an information sharing agreement with the other venue or have other means to assess whether positions in the reference swap or index are being manipulated in order to affect prices in the cash-settled swap. If the CFTC requires SEFs to have such agreements, it should require that each SEF exercise good faith in considering requests for such information sharing agreements and not unreasonably refuse to enter into such an agreement.

K. Core Principle 5: The CFTC Needs to Clarify the Meaning of "Non-Routine Data."

Core Principle 5 will require a SEF to establish rules that will permit it to obtain information and share such information with the CFTC.[41] Proposed Rule 37.502 would require a SEF to collect "non-routine data" from participants and be permitted to examine the books and records kept by the traders on its facility. It is not clear what "non-routine data" means. The rule should make clear that a SEF is only required to collect and maintain participant information that is directly related to such participants' activity conducted pursuant to the SEF's rules.

L. Core Principle 7: Technical Corrections Need to Be Made to the Rules Proposed to Implement Core Principle 7.

Core Principle 7 will require a SEF to establish and enforce rules to ensure the financial integrity of swaps entered on or through the SEF.

1. SEFs Cannot Evaluate Credit Arrangements or Collateral for Uncleared Swaps.

Proposed Rule 37.702(c) would require a SEF's members, for uncleared swaps, to demonstrate that they have entered into credit arrangement documentation, have the ability to exchange collateral, and meet any credit filters that may be adopted by the SEF. The CFTC asks whether these standards are appropriate and "how SEF members would demonstrate sufficient credit documentation and ability to exchange collateral." Proposed Rules at 1229.

A SEF is not in a position (and will not have the resources) to determine whether such arrangements or exchanges of collateral are sufficient. The Proposed Rule should be modified to require that the parties to an uncleared swap "represent" rather than "demonstrate" that they

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[41] The information collection requirements under Proposed Rule 37.500 substantially overlap with the SDR function. To the degree there is overlap, this illustrates that the SDR function is unneeded for SEF-traded swaps, or, at the very least, that a SEF could serve as its own SDR. Such an arrangement could be facilitated by streamlining some SDR requirements where the SDR is also a SEF.

satisfy the requirements.

2. A SEF Cannot Evaluate Eligibility for the Commercial End-User Exemption.

Proposed Rule 37.701 would make a SEF responsible, when one of its market participants that is a commercial end user wants to trade a swap and not clear it, for ensuring that the participant qualifies as a commercial end user. A SEF is not the appropriate entity to confirm such eligibility; after all the CFTC itself receives an exemption notice from each commercial end user. The rule should be revised to permit a SEF to rely on a representation from a commercial end-user that it qualifies for the exemption for that swap.

M. Core Principle 9: The CFTC Needs to Clarify Whether a SEF Can Be a Real- Time Price Disseminator.

Core Principle 9 will require timely public reporting of information.

1. A SEF Should Be Permitted to Publicly Disseminate Swap Data.

Proposed Rule 37.901 would require a SEF to report specified swap data as provided under Parts 43 and 45. Under Proposed Rule 43.3(b)(1), a SEF would have an obligation to "publicly disseminate" all swap transaction and pricing data as soon as technologically practicable after execution of a swap on that SEF. The SEF would need to satisfy this obligation by reporting swap transaction information to an SDR or a third-party service provider.

Proposed Rule 43.2(bb) would define a third-party service provider as "an entity, other than a registered [SDR], that publicly disseminates swap transaction and pricing data in real-time on behalf of a [SEF]. . ." Proposed Rule 43.3(d) would require that a SEF that uses a third-party service provider (as opposed to an SDR) to publicly disseminate swap transaction and pricing data to ensure that:

(i) the third-party service provider actually distributes such information in real-time in compliance with proposed part 43, and

(ii) the CFTC has access to such data.

Together with Parts 43 and 45, the Proposed Rule appears to preclude a SEF from acting as its own real-time public disseminator and holds the SEF responsible for dissemination by a third party service provider.

By holding the SEF responsible for the third-party service provider, it appears that the CFTC is suggesting that this service provider would not be regulated by the CFTC and suggests that the SEF could elect any third-party service provider. We ask that the CFTC confirm this understanding. Proposed Rule 37.901 also should allow a SEF to publicly disseminate its own

swap data.[42]

2. The Proposed Rules are Duplicative.

Proposed Rules 37.900(b) and 37.902 appear to be entirely duplicative. Proposed Rule 37.902 should be withdrawn.[43]

N. Core Principle 10: The CFTC Should Clarify Whether a SEF Can Delegate Record Retention Requirements Associated With Regulatory Functions it Has Delegated.

Core Principle 10 will require a SEF to maintain records and report information to the CFTC as required. As part of the implementation of this Core Principle, the CFTC would require a SEF to maintain records of investigatory and disciplinary files for at least five years in a form and manner acceptable to the CFTC. Proposed Rule 37.1001. The CFTC adds these requirements (which extend beyond what is required by Dodd-Frank) because DCMs are required to keep these records. Proposed Rules at 1229, n. 92. The SEF should be permitted to delegate these recordkeeping requirements to the RSP performing the investigatory and disciplinary procedures. The Proposed Rules should permit a SEF also to delegate recordkeeping requirements to the RSP to which it has delegated the corresponding regulatory function.

O. Core Principle 13: the Financial Resources and Reporting Requirements Should Be Clarified and Streamlined.

1. A Safe Harbor Should Be Provided Where a SEF Follows a Specified Methodology for Calculating Projected Costs and Financial Resources.

Core Principle 13 will require a SEF to have adequate financial resources. Proposed Rules 37.1300-37.1305 would generally require SEFs to have financial resources in excess of one year's operating costs and liquid financial resources in excess of six months' operating costs. The proposal does not prescribe any methodology for computing projected costs or valuing financial resources. Although we support the CFTC's flexible approach, the proposal potentially leaves SEFs open to second-guessing. The CFTC should include a safe harbor for specified methodologies used to calculate projected costs and financial resources.

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[42] By comparison, Dodd-Frank requires SB SEFs to have the capacity to disseminate trade information with respect to transactions executed on or through the SB SEF. New Exchange Act § 3D(d)(8)(B). Differences between the rules regarding public dissemination of swap data and SB swap data do not correspond to any intrinsic difference between swaps and SB swaps. In addition to the reasons discussed above for permitting SEFs to publicly disseminate their own transaction data, there is no reason for such drastically inconsistent rules. See Dodd-Frank § 727, adding new § CEA 2(a)(13)(D). Although not explicitly required by the SEF Core Principles, MarketAxess requests that the CFTC exercise its discretion to permit SEFs to publicly disseminate their own swap data.

[43] Proposed Rule 37.900(a) seems entirely duplicative with the rules proposed in part 43. However, we understand that Proposed Rule 37.900 is simply repeating the statutory language.

In addition, Proposed Rule 37.1304 contains a typographical error. The Proposed Rule would require a SEF to periodically update the current market value of its financial resources used to meet its financial obligations. The Proposed Rule mistakenly cross-references Proposed Rule 37.701, which relates to the mandatory clearing requirement. Consistent with Core Principle 13 and as stated in the preamble (Proposed Rules at 1231), the cross-reference should be to Proposed Rule 37.1301.

2. SEFs Should Only Be Required to Represent Quarterly That They Satisfy the Financial Resources Requirements.

Proposed Rule 37.1306 would require a SEF to make extensive quarterly reports to the CFTC regarding its financial resources. A SEF would be required to submit various documents including balance sheets, income statements, cash flows of the SEF (or its parent), documentation explaining valuations and determinations, and copies of any agreements establishing or amending a credit facility, insurance coverage or other arrangements supporting the SEF's conclusion regarding the sufficiency of its resources. The proposed requirement is entirely unnecessary and will impose undue burdens on SEFs. The CFTC should instead require a senior officer from each SEF such as the CFO or CEO to represent that the SEF satisfies the financial resource requirements. A requirement for a representation regarding financial resources is consistent with the Core Principle approach to SEF regulation.

P. Core Principle 14: Proposed System Safeguard Rules Should Be Clarified.

Core Principle 14 will require a SEF to maintain system safeguards. Proposed Rule 37.1400 would require a SEF to "[p]eriodically conduct tests to verify that backup resources of the SEF are sufficient to ensure continued . . . order processing and trade matching." The CFTC should specify how often such tests must occur. Proposed Rule 37.1401 would impose more stringent system requirements (specified in the rule) for a SEF that is a "critical financial market." The CFTC needs to explain the criteria for determining which SEFs would need to meet these higher standards. Once the process is described, MarketAxess may have additional comments.

CONCLUSION

MarketAxess very much appreciates the diligence, insight, and hard work of the CFTC and its staff as the development of SEF regulation unfolds. MarketAxess agrees with and supports many aspects of the Commission's proposals. Based on our own experiences in operating a successful electronic trading platform, we have also suggested a number of areas for improvement, in particular the provision of a flexible and cost-effective regulatory framework that can fully allow a RSP separate from the trading platform to perform broadly the SEF's self-regulatory functions. We believe strongly that this model is appropriate for SEFs, which are expected to experience episodic trading and limited execution fees.

We look forward to working with the CFTC to achieve the Congressional objective of promoting swap trading on SEFs. If you have any comments or questions about our comment letter or the SEF issues generally, please contact me or our General Counsel, Chuck Hood, at (212) 813-6053.

Respectfully,

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Chairman and Chief Executive Officer
MarketAxess Holdings Inc.

Cc:

Chairman Gary Gensler
Commissioner Michael Dunn
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