

May 16, 2011

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

Re: **Antidisruptive Practices Authority**

Dear Mr. Stawick:

The Commodity Futures Trading Commission ("CFTC") has requested public comment on proposed guidance to interpret the scope of the prohibition of disruptive practices on registered entities under Section 4c(a)(5) of the Commodity Exchange Act ("CEA"), as amended by Dodd-Frank. *See* Antidisruptive Practices Authority, 76 Fed. Reg. 14,943 (March 18, 2011) (the "Proposed Order"). 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.¹ MarketAxess' current operations are consistent with the CFTC's swap execution facility ("SEF") 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 public comment on, the CFTC's proposals that affect SEFs.

As amended by Dodd-Frank, the CEA will prohibit any person from engaging in any trading, practice, or conduct on or subject to the rules of a registered entity that:

(I) violates bids or offers;

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 operator by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority. 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.



(II) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
(III) is, is of the character of, or is commonly known to the trade as, spoofing (bidding or offering with the intent to cancel the bid or offer before execution). Dodd-Frank § 747, adding new CEA § 4c(a)(5).

Under new CEA § 4c(a)(6), the CFTC may adopt rules that are reasonably necessary to prohibit these three trading practices *and* any other trading practice that is disruptive of fair and equitable trading. Dodd-Frank § 747. We support the CFTC's decisions not to propose rules under new CEA § 4c(a)(6) and to instead propose guidance clarifying the scope of new CEA § 4c(a)(5).³ MarketAxess appreciates the opportunity to comment on this Proposed Order.

A. *Violating Bids or Offers*

1. *A Counterparty Must Be Permitted to Take into Account Counterparty Credit Risk When Entering into an Uncleared Swap.*

Under the Proposed Order, a person would violate bids or offers under new CEA § 4c(a)(5)(A) if that person buys a contract at a price that is higher than the lowest available offer or sells a contract at a price that is lower than the highest available bid price. Proposed Order at 14,946-14,947. The CFTC may have intended for this interpretation to apply only to cleared swaps. But the text of the Proposed Order suggests otherwise. As written, a person requesting a quote for an uncleared swap on a SEF would only be permitted to execute on the "best" priced response, even if that person has the "worst" credit terms with the respondent providing the "best" price.

When entering into an uncleared swap, a market participant must take into account counterparty credit risk and have the flexibility to execute on a price that is not the "best" price when more favorable credit terms accompany that price. The final order should make clear that the CFTC's interpretation of new CEA § 4c(a)(5)(A) does not apply to uncleared swaps. This approach would allow market participants to enter into uncleared swaps on a SEF's Request for Quote System ("RFQ System") without taking on undesired counterparty credit risk and would promote the trading of swaps on SEFs as intended by Congress.

2. *A Swap Executed on a SEF's RFQ System Cannot Violate Bids or Offers.*

The Commission states that a person buying a contract at a price that is higher than the lowest available offer (or selling a contract at a price that is lower than the highest available bid price) violates new CEA § 4c(a)(5)(A) "regardless of intent." Proposed Order at 14,945-14,946.

³ In November 2010, the CFTC released an Advance Notice of Proposed Rule requesting comment on 19 questions for the Commission's consideration when contemplating whether to propose a rule under new CEA § 4c(a)(6). 75 Fed. Reg. 67,301. Instead of proposing rules, the CFTC has requested comment on a Proposed Order which would provide interpretive guidance on the scope of new CEA 4c(5). See 76 Fed. Reg. 14,826 (terminating the ANPR).



Under this proposed interpretation, a customer who selects Dealer A as its counterparty for a cleared swap would violate bids or offers if Dealer B made the same swap available at a better price. While a customer only considers price when entering into a swap with a blind counterparty, a customer that knows the identity of its counterparty may consider other factors. MarketAxess requests that the CFTC clarify that a market participant requesting a quote on a SEF's RFQ System has the flexibility to consider factors beyond price because the market participant knows the identity of its prospective counterparties; a market participant's choice to execute on a quote that is not the "best" price on the RFQ System is not a disruptive trading practice.

3. *The CFTC Should Clarify that new CEA § 4c(a)(5)(A) Does Not Create Any Sort of Best Execution Standard Across a SEF's Different Permitted Execution Methods.*

MarketAxess agrees with the Commission that new CEA § 4c(a)(5)(A) "does not create any sort of best execution standard across multiple trading platforms and markets." The CFTC states that "a person's obligation to not violate bids or offers is confined to the specific trading venue which he or she is utilizing at a particular time." We ask that the Commission confirm in its final Interpretive Order that a person would not violate bids or offers by buying or selling a contract on a SEF's Request For Quote System when that contract is available to buy or sell at a "better" price through another permitted execution method offered by that SEF such as an Order Book or a centralized electronic screen.

B. Orderly Execution of Transactions During the Closing Period.

The CFTC states that a swap executed on a SEF "will be subject to the provisions of section 4c(a)(5)(B) if a closing period or daily settlement price exists for the particular swap." Proposed Order at 14,946. The Commission interprets the term "closing period" to generally mean the period in the contract or trade when the daily settlement price is determined under the rules of that trading facility, but no definition is provided for "daily settlement price." On its face, the term "daily settlement price" means a settlement price that is determined on a daily basis.

MarketAxess does not currently plan to determine a settlement price on a daily basis for its listed swaps contracts. But MarketAxess does plan to provide transparency to its market participants by posting on its system a rolling indicative quote throughout each trading session. The time period in which MarketAxess will determine this indicative quote will depend upon the liquidity of the swap. For less liquid swaps, MarketAxess may include the entire day. For more liquid swaps, MarketAxess may include shorter subsets of the trading session. MarketAxess requests that the CFTC confirm in its final Interpretive Order that a rolling indicative price based on the swaps executed throughout that day would not be considered to be a "daily settlement price."



C. Spoofing.

The CFTC has correctly recognized that the spoofing provision "is not intended to cover non-executable market communications such as requests for quotes and other authorized pre-trade communications." Proposed Order at 14,947. MarketAxess also agrees with the CFTC that "a § 4c(a)(5) spoofing violation requires that a person intend to cancel a bid or offer before execution." We further agree with the CFTC that orders, modifications, or cancellations submitted as part of a legitimate, good-faith attempt to consummate a trade would not violate new CEA § 4c(a)(5).

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,

Richard M. McVey
Chairman and Chief Executive Officer
MarketAxess Holdings Inc.