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January 12, 2012

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

Re: RIN 3038-AD18: Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade

Dear Mr. Stawick:

The Commodity Futures Trading Commission ("CFTC" or "Commission") has requested public comment on proposed rules published in the Federal Register ("the Proposal") that would establish a process for a designated contract market ("DCM") or swap execution facility ("SEF") to make a swap "available to trade" as set forth in new Section 2(h)(8) of the Commodity Exchange Act ("CEA" or the "Act") pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

Our firm, Spring Trading, Inc. ("Spring Trading"), operates a service called TeraExchange. Spring Trading has filed notice with the Commission for operation as an exempt board of trade ("EBOT") and will submit a name change to shift EBOT status to TeraExchange. TeraExchange intends to apply to the CFTC for designation as a Swap Execution Facility ("SEF") and/or as a designated contract market ("DCM") and with the Securities and Exchange Commission as a security-based ("SB") SEF. TeraExchange will provide the market with a fully transparent electronic central limit order book ("CLOB") execution facility for clearable swaps along with a sophisticated cross-asset trading, data and analytics platform, which will enable participants to connect to TeraExchange as well as to other liquidity venues across multiple regions and asset classes. For participants wishing to connect directly to TeraExchange via in-house and 3rd party applications, FIX and FIX FAST connectivity will also be offered. TeraExchange will also provide full voice support and execution consulting for customized transactions and block trades. All orders submitted to TeraExchange must first pass through a pre-trade credit checks set by the customer's clearing member. All trades will be cleared with the authorized designated clearing organization. TeraExchange anticipates listing essentially all cleared swap products for trading, including credit default, interest rate, energy, agricultural and FX swaps.

Section 2(h)(8) of the CEA requires that swaps subject to the mandatory clearing requirement under Section 2(h)(1) be traded on a DCM or SEF, unless no DCM or SEF makes the swap available to trade or the swap transaction is subject to the end user clearing exception under Section 2(h)(7). Under the CFTC's proposed procedure, DCMs and SEFs would be initially responsible for making an available to trade review for a swap by submitting a detailed filing under the Part 40 rule filing procedures, and the Commission then would have a role in reviewing such determinations. To make a swap available to trade, a DCM or SEF would need to consider seven enumerated factors (and a catch-all category) described in the Proposal. The Proposal also would allow a DCM or SEF to assess in the first instance whether a separate swap was so closely related to a swap subject to the mandatory trade execution requirement that such a separate swap should be deemed by the DCM or SEF to be "economically equivalent" and thus also subject to the mandatory trade execution requirement.

I. EXECUTIVE SUMMARY

The Proposal can be roughly divided into three principal components: (1) the process for making the "available to trade" determination; (2) the substantive basis for making such a determination; and (3) the process and substantive basis for determining whether a related swap is "economically equivalent" to a swap that has been determined to be made available to trade.

With respect to process, we support, with the inclusion of a few changes noted below, the balanced approach set forth in the Proposal under which a DCM or SEF would generate its own analysis but then submit such analysis to the CFTC for its review and oversight. We also support applying the list of factors included in the Proposal that would need to be considered by a SEF or DCM in conducting its analysis. Furthermore, we believe that there is need for greater detail and clarity in the definition for an economically equivalent swap.

II. DISCUSSION

A. PROCESS FOR DETERMINATION OF "AVAILABLE TO TRADE"

As noted in the Proposal, the Commission has already received a variety of perspectives on the process for making the determination on available to trade, and there is a fundamental split among the commenters with some preferring a determination by the Commission itself and others preferring that the regulated execution facility instead make this determination. 76 FR 77728 (December 14, 2011) at 77730. The commenters who supported a Commission determination suggested that the regulated facility could have incentives to prematurely make certain swaps available to trade in order to mandate trading in these instruments on their platforms. id.

We also note that the SEC, in its proposed rulemaking concerning registration and oversight of SBSEFs, proposed that the SEC establish objective measures under which this determination would be made. 71 FR 10948 (February28, 2011) at 10969. However, the SEC did not provide those standards in that proposed rulemaking but indicated instead that such standards would be developed over time when adequate data were available. id.

We are not opposed to the determination on available to trade being made by the Commission. However, this approach would require significant CFTC staffing resources to initiate the necessary quantitative reviews as well as to document and to draft the analyses and recommendations. In 2010, Commission staff needed to devote a considerable amount of time and effort to the process of making formal recommendations for a Commission determination as to whether a particular swap should be deemed to be serving a "significant price discovery function" (for purposes of heightened regulatory requirements on an exempt commercial market). However, that process was limited to the review of a few dozen swaps, while the process of reviewing swaps on an available to trade determination could potentially involve the review of hundreds and perhaps thousands of swaps over time.

Thus, unless the Commission was to somehow obtain a dramatic increase in its staffing resources, it strikes us that a review grounded only on a determination by the Commission would result in unavoidable delays and (despite the best efforts of the Commission's dedicated staff) would prove to be a wholly unworkable process. In seeking to meet its obligations to consider the costs and benefits of its proposed actions under Section 15 of the CEA, the CFTC generally strives to implement the most cost-effective approach to achieving the objectives of the proposed regulation or order. In this case, a process structured around a determination by the Commission itself clearly would not be the most resource-effective approach.

By comparison, rather than having the Commission itself undertake to initiate and generate the analysis, we believe that the more reasonable approach is the balanced approach set forth in the Proposal. Under this approach, a SEF or DCM would first compile the analysis but then this analysis would be submitted to, and subject to a review by, Commission staff. The theoretical concerns that have been raised about the incentives that this might create for a SEF or DCM could be addressed through a series of modifications to the Proposal (which would require in part the CFTC to modify its Part 40 procedures to allow for special timeframes concerning these categories of filings).

Before turning to those proposed modifications, we believe that it would be useful to begin by contrasting making a swap available to trade with the mere listing for trading of a swap. Section 723 of the Dodd-Frank Act establishes a significant new regulatory requirement that is dependent upon whether a DCM or SEF makes a swap "available to trade". However, this phrase is not further defined in the Dodd-Frank Act. We are not aware that this specific phrase is used with such frequency in financial markets lexicon so as to have a clear and plain meaning in absence of further context. That stated, the fact that Congress elected to use this phrase (rather than simply referring to the listing for trading of a swap) supports the view that Congress had intended something more substantive in mind than the mere listing for trading of a particular swap.

If one moves beyond the initial plain meaning analysis of this phrase, a statement made shortly prior to passage of the Dodd-Frank Act by Senator Blanche Lincoln, who was then serving as the Chairman of the Senate Agriculture Committee, provides some useful insight. Senator Lincoln commented that the CFTC should take a "practical rather than a formal or legalistic approach." Congressional Record, 111th Congress (2009-2010) July 15, 2010, p. S5923. Senator Lincoln then suggested that the CFTC could "consider, for example, whether there is a minimum amount of liquidity such that the swap can actually be traded on the facility." id.

As to our proposed modifications, we first believe that a SEF or DCM should only analyze for possible filing a swap or economically equivalent swap that has already been actually listed for a period of time on that SEF or DCM. We would favor a listing period of approximately three to six months before a filing could be submitted to the CFTC for its review. Such a timeframe would ensure that trading on that particular SEF or DCM would provide one data stream that could be coupled with any other information

Second, under our proposed modifications, that available to trade determination rule filing, as has historically been the case for a number of other rule filings that might have an industry-wide impact, would be routinely published for public comment, with a 30 day comment period to provide an appropriate opportunity for industry participants, including but not limited to buy side firms, to submit their views.

Third, in the event that a swap is deemed to be made available to trade, as discussed in the preamble of the Proposal regarding comments previously received concerning the appropriate effective date, we would support an effective date that would provide a reasonable amount of time for the industry to make adjustments in order to comply with this determination and only trade that swap on a SEF or DCM. By allowing for a reasonable transition period, such as an effective date 30 days following the end of the CFTC's review period, the CFTC could assist industry participants, including buy side firms, by allowing an adequate period for them to revise their internal procedures and trading practices.

Moreover, under the Proposal, upon a determination that a swap is available to trade, all other SEFs and DCMs listing or offering for trading such swap and/or any economically equivalent swap, would be required to make those swaps available to trade for purposes of the trade execution requirement. However, the Commission further noted that if a DCM or SEF makes a swap available to trade, the Proposal would not require other DCMs and SEFs to list or offer that swap, or an economically equivalent swap, for trading. We strongly support this approach and we believe that it promotes competition by allowing a variety of business models for SEFs, including for example allowing a SEF to serve in a niche capacity and to focus upon and specialize in a particular asset class, such as energy swaps. Even within that asset class, a SEF or DCM should be free to determine whether or not it wants to list a particular swap for trading. For example, if a SEF submits a filing regarding an interest rate swap that is thereafter deemed to be available to trade, other SEFs and any DCMs that list swaps would not be required to begin listing that particular swap for trading (if the swap was not already listed for trading by them).

That stated, if a SEF or DCM does determine to list a particular swap for trading and that swap is determined to be available to trade as a result of an action undertaken by another execution facility, then such SEF or DCM would need to identify clearly on its platform that the swap has been deemed to be made available to trade.

B. ACTORS FOR CONSIDERATION ON AVAILABLE TO TRADE

Under the Proposal, proposed §§ 37.10(b) and 38.12(b) would provide that, to make a swap available to trade, a SEF or DCM shall consider, as appropriate, the following factors with respect to such swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions on SEFs, DCMs, or of bilateral transactions;

(3) The trading volume on SEFs, DCMs, or of bilateral transactions;

(4) The number and types of market participants;

(5) The bid/ask spread;

(6) The usual number of resting firm or indicative bids and offers;

(7) Whether a SEF's trading system or platform or a DCM's trading facility will support trading in the swap; or

(8) Any other factor that the SEF or DCM may consider relevant

In the Proposal, the Commission observed that no single factor would be dispositive, as the DCM or SEF could consider any one factor or several factors in assessing whether to make a swap available to trade.

We believe that the Commission has appropriately identified the relevant factors in assessing whether it is possible for a SEF or DCM to offer a market in a particular swap that has been listed for trading by that SEF or DCM. One possible addition might be to expand the list to include consideration of factors (1)-(4) in the underlying cash markets. In our experience, a liquid market in the underlying product provides a degree of support for the ability of OTC traders to find ready and willing buyers and sellers in the OTC swap product.

Accordingly, to the extent possible at this time and again in the future when better data should be available, we believe that it could be helpful for the Commission to provide some interpretive guidance regarding these factors. For example, in the event that a SEF or DCM sought to rely only on the frequency of transactions, it could be useful to understand the CFTC's expectations in terms of a threshold level of volume that is acceptable for purposes of the available to trade determination.

C. DETERMINATION OF ECONCOMICALLY EQUIVALENT SWAPS

We believe that the determination as to economically equivalent swaps should be rolled into the initial determination on whether the original swap should be deemed to be available to trade, and this potential determination on economically equivalent swaps should be exposed to public notice and the opportunity to submit written comments. Under the Proposal, the term "economically equivalent swap" would be defined as a swap that the SEF or DCM determines to be economically equivalent with another swap after consideration of each swap's material pricing terms.

While this is a useful starting point, we believe that there is need for greater detail and clarity in the definition for an economically equivalent swap. One commenter to the Proposal has suggested that the Commission focus on swaps that provide the same payment stream. While we agree that another swap with consistent material economic terms that provides the same payment stream should be deemed to be economically equivalent, other analyses might also support a finding on economic equivalence, and thus we would urge the Commission not to rely on the payment stream analysis as the exclusive approach.

D. INFORMATION REPORTED BY REPORTING ENTITIES

For purposes of compliance with the Paperwork Reduction Act, the Commission has estimated the final information collection burdens of the available to trade determination rule filing based on an estimate that 50 registered entities will be required to file rule submissions. The CFTC estimates that each such filing will require approximately eight hours of staff time.

We have seen wildly varying estimates of the number of entities that will become registered as SEFs, with some estimates running as high as 40 SEFs. We suspect that the actual number of registrants will be

considerably fewer than that total, with a number of entities determining instead to direct order flow to registered SEFs or perhaps to serve in a SEF aggregator role for their clients. Still, we take it that the Commission has opted to be conservative by utilizing the high end of the estimated range for SEFs (and then adding on an estimate for approximately 10 DCMs). We support following this conservative approach.

As to the staff time required for each filing, we suspect that in practice the staff time routinely will exceed eight hours, as a SEF's or DCM's internal review process on the available to trade determination likely will involve input from research staff and business analysts as well as the preparation of the filing by compliance or regulatory staff. Thus, we believe that the compilation of necessary data and other preparations for the rule filing routinely will take 15-20 hours of staff time, if not more.

In the Proposal, the CFTC has further estimated that the proposed requirement for the filing of an annual report by every SEF or DCM would take about 40 hours of staff time at each such SEF or DCM. While it is impossible to predict how many contracts would need to be covered in such an annual report, again we believe that this estimate is likely on the lower end of the range and that an estimate of 60-80 hours is probably more realistic.

E. COST BENEFIT ANALYSIS

With regard to the Commission's consideration of costs, the Commission has generated estimates of possible costs to a SEF or DCM based on the assumption that both the preparation of an available to trade filing as well as the preparation of the annual report will involve only the effort of one compliance staff person. As indicated in Section D. above, we do not believe that these reviews will entail a simple mechanistic process but instead likely will require the exercise of some judgment regarding that SEF or DCM's markets. Accordingly, we see it as highly likely that a SEF's or DCM's internal processes will involve a fair degree of consultation and collaboration among departments and will not be restricted solely to one staffer in the compliance department. Given the industry-wide consequences attached to the available to trade determination, we anticipate that Commission staff will be seeking a substantial degree of analysis and data from SEFs and DCMs, and that over time these reports will constitute an effort similar in scope to the effort that is currently associated with the review by a DCM to assess whether or not a new futures contract to be listed for trading is susceptible to the threat of manipulation. Thus, we would respectfully suggest that the Commission revisit this assumption when preparing the cost-benefit analysis for its final rules.

With regard to the Commission's consideration of benefits, the Commission rightly notes that the proposed regulations would be expected to promote the trading of swaps on DCMs and SEFs and competition among these entities as well as to promote price discovery. As a result of these benefits, we thus see a subsequent indirect or knock-on benefit to the Proposal. In particular, by promoting the trading of swaps on SEFs and DCMs and the process of price discovery, the Proposal should thereby promote markets that will continue to provide DCOs with transparent and reliable pricing that can be utilized in a DCO's daily mark-to-market and other settlement procedures, thus providing indirect support for the reduction of systemic risk.

F. RESPONSES TO THE LIST OF SPECIFIC QUESTIONS POSED IN THE PROPOSAL

Should the Commission allow a SEF or DCM to submit its available to trade determination with respect to a group, category, type, or class of swaps based on the factors in§§ 37.10(b) or 38.12(b)? How should the Commission define group, category, type, or class of swaps?

Yes. The CFTC should allow a SEF or DCM to submit its available to trade determination with respect to a group, category, type, or class of swaps. However, while the SEF or DCM could provide general information applicable across such a group or category, it should also include data applicable to each individual swap as well.

Is the Commission's proposed approach in §§ 37.10(b) and 38.12(b) regarding the determination that a swap is available to trade appropriate? If not, what approach is appropriate and why?

Should a SEF or DCM consider total open interest and notional outstanding for similar tenors in §§ 37. I O (b) and 38.12(b)?

We support the Commission's proposed approach with the suggested modifications that have previously been discussed above.

In evaluating the factors under proposed §§ 37. I O (b) and 38.12(b), should the Commission allow a SEF or DCM to consider the same swap or an economically equivalent swap on another SEF or DCM? What are the advantages and disadvantages of such an approach? Should a SEF or DCM consider the amount of activity in the same swap or an economically equivalent swap available primarily or solely in bilateral transactions?

As previously noted, we believe that a SEF or DCM should only analyze for possible filing a swap or economically equivalent that has been listed for a period of time on that SEF or DCM. However, in the context of conducting its analysis, we believe that it could be useful and appropriate for a SEF or DCM to consider data applicable to the same swap or same economically equivalent swap that is listed for trading on another SEF or DCM.

In addition, while we believe that the transaction data for activity occurring on SEFs and DCMs would be the most relevant for this analysis, the amount of activity in the same swap or economically equivalent swap that is conducted via bilateral transactions also has some value and could be considered when it is available. To that end, we trust that such data will be readily available for analysis by the SEF or DCM either from the CFTC itself or from one or more SDRs that are serving as a repository for that asset class.

Should the Commission allow a SEF or DCM to submit an available to trade determination under§§ 37. IO (a) or 38.12(a), if such SEF or DCM does not itself list the subject swap for trading?

No. We believe the SEF or DCM should have already listed the subject swap for trading for a reasonable period of time so that there can be data available from such listing that could be reviewed by the trading facility as well as by the CFTC.

When a DCM or SEF makes a swap available to trade, should all other DCMs and SEFs listing or offering for trading such swap and/or any economically equivalent swap be required to make those swaps available to trade?

If a SEF or DCM already has the same swap or an economically equivalent swap listed for trading, then we believe that the determination on available to trade should be applied across all affected SEFs and DCMs.

What would be the economic impact on those DCMs and SEFs that would be required to make same swaps and/or economically equivalent swaps available to trade?

The economic impact should be minimal, given that the other SEF or DCM already would have made a business decision to list a particular swap for trading. Thus, the impact would be limited to clarifying that the listed swap had been deemed to be available to trade.

If a SEF or DCM is required to make an economically equivalent swap available to trade, should that SEF or DCM be required to submit, under part 40 procedures, its reasoning for deciding that a certain swap is or is not economically equivalent to another swap? Should a SEF or DCM be required to consider the factors under§§ 37.10(b) or 38.12(b)? Should a SEF or DCM be able to use the factors under§§ 37.10(b) or 38.12(b) to submit to the Commission for consideration that an economically equivalent swap should not be subject to the requirement under§§ 37.10(c) (l) or 38.12(c) (l)?

As noted above, we believe that the determination as to economically equivalent swaps should be rolled into the initial determination on whether the original swap should be deemed to be available to trade, and this determination should be exposed to public notice and the opportunity to submit written comments.

Should a DCM or SEF provide the Commission notice that an economically equivalent swap has been made available to trade?

If we assume that our suggestion above is followed and that certain swaps are deemed to be economically equivalent as part of the original process, then we would note that notice to the Commission should be provided for additional or subsequent swaps that are determined to be economically equivalent, such as swaps that are newly listed for trading.

If so, should the Commission provide notice to the public? If so, how? How would market participants conducting bilateral transactions know that an economically equivalent swap has been made available to trade?

Yes, given the market implications of such a determination, we support a notice and comment process for the public.

Is the Commission's proposed definition of the term "economically equivalent swap" appropriate? If not, how should the Commission revise the definition as applicable to proposed§§ 37.10 and 38.12 and why? Are there other factors that the Commission should consider when defining the term economically equivalent swap?

We would favor greater detail be added to this process, which could take the form of additional detail in this definition or perhaps in the form of subsequent interpretive guidance to be provided by the Commission.

Should the Commission require that DCMs and SEFs consider specific material pricing terms?

Given the variety of pricing terms across asset classes, the Commission may not want to impose hard requirements on specific terms. But a list of terms for possible consideration could be helpful.

If so, what terms and why? For instance, should DCMs and SEFs consider same tenor or same underlying instrument?

We do believe that the same tenor should be considered.

Should the Commission or DCMs and SEFs make the determination of which swaps are economically equivalent?

If the determination remains initially with a SEF or DCM, we believe that there should be clear guidelines provided by the CFTC as to how such determinations should be made.

Is the Commission's proposal that DCMs and SEFs conduct reviews and assessments appropriate? If not, what is appropriate and why?

We do support the CFTC's proposal on conducting reviews and assessments, as markets evolve dynamically over time, and at times significant changes can occur within relatively short timeframes.

Should the Commission specify a process whereby a swap that has been determined to be available to trade may be determined to no longer be available to trade? If so, should the Commission use the rule submission procedure under Part 40 for this process and why? Please explain the details of this approach, including who would make the determination that a swap is no longer available to trade. Should such a determination apply to all DCMs and SEFs universally or should it only apply to the particular DCM or SEF that seeks to no longer make a swap available to trade? What are the advantages and disadvantages of such approach? If the Commission should not specify a process to no longer make a swap available to trade, please explain why.

It is probably useful to set out an approach for reaching this determination, which could be initiated either by the Commission itself or by an affected SEF or DCM. If initiated by the Commission itself, this could take the form of a proposed order that is issued for public notice and comment. If initiated by a SEF or DCM, this could take the form of a proposed rule filing that is similarly issued for public notice and comment.

It is possible that a swap could be listed as available to trade for several years and that some SEFs or DCMs could attract and retain significant liquidity in a particular swap, while other competing SEFs or DCMs lose the ability over time to be able to offer a market in that swap. Thus, we would favor the scope

of the determination (about a swap no longer being available to trade) being made on a case-by-case basis depending on the facts and circumstances that apply to that particular swap.

III. CONCLUSION

TeraExchange very much appreciates the diligence, insight, and hard work of the CFTC and its staff as the development of SEF regulation unfolds. In summary, as to the process of determining whether a swap is available to trade, we support, with the inclusion of a few changes noted in the body of the letter, the balanced approach set forth in the Proposal under which a DCM or SEF would generate its own analysis but then submit such analysis to the CFTC for its review and oversight. We also generally support utilizing the list of factors included in the Proposal that would need to be considered by a SEF or DCM in conducting its analysis. Furthermore, we believe that there is need for greater detail and clarity in the definition for an economically equivalent swap.

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 at cmartin@teraexchange.com or at (908) 273-8288.

Respectfully,

Christian Martin
Chief Executive Officer
Spring Trading, Inc.
d/b/a Tera*Exchange*

cc: Chairman Gary Gensler
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia
Commissioner Mark Wetjen