

J.P.Morgan

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

February 13, 2012

Regarding: RIN 3038–AD18 - Process for a Designated Contract Market (“DCM”) or Swap Execution Facility (“SEF”) To Make a Swap Available To Trade (“MAT”)

Dear Mr. Stawick:

We welcome the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC”) with respect to the proposed rules referred to above.

We would like to provide the following comments with regard to the proposed rules. In light of the number of comment letters being addressed to the CFTC we respectfully submit a short summary of our arguments. We are available to discuss any of these topics in greater detail.

1. MAT Process: The CFTC, not DCMs or SEFs, should make the MAT determination. The process should provide for public consultation and time for market participants to adapt to the new market structure:

We respectfully set out below an outline of key elements of a MAT determination process that would promote systemic stability and reduce the impact on liquidity of this transition to a new market structure:

- The process would be initiated by a DCM or SEF submission.
- The CFTC, rather than each DCM or SEF, would make the MAT determination.
- The factors to consider in determining MAT would be supported by objective criteria. One objective criterion would be actual liquidity observed on the DCM or SEF making the submission with respect to trades executed during a sample period not less than 180 days prior to the submission
- Adequate time for the CFTC to review: We propose 90 days from the date of the submission by the DCM or SEF.
- A public comment period: We propose 30 days.
- Adequate time for market participants to implement compliance with the new requirement, depending on level of sophistication of the market participant: We recommend a 90-, 180- and 270-day staggered timeline. The proposed 30-day timeline is not sufficient for market participants to establish links into a DCM or SEF. Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”) would have 90 days, some market participants would have 180 days, and other market participants (those who may require sub accounts to execute documentation to sign up to SEF trading, as well as those who trade less frequently) would have 270 days to comply, with the possibility for

those who choose to comply early to do so. The timeline would run from the later of (a) implementation of the clearing requirement, and (b) MAT determination.

- The staggered implementation timeline is necessary for operational reasons (as addressed in more detail below), and it would mirror the clearing implementation timeline set out by the CFTC.¹
- During the first two years of this new market structure, once the MAT determination is made, the list of swaps subject to mandatory DCM and SEF execution would be locked for one year. This would allow time for the substantial technology and infrastructure build required by the new rules to take place. No new swaps could be added.
- From inception, there would be a process for petitioning the CFTC to remove the mandatory DCM or SEF execution requirement if the underlying instrument is no longer sufficiently liquid. In our view, the appropriate time for this drop off review is quarterly (or monthly, if deemed necessary) rather than yearly.
- Please refer to paragraph 4 below for a detailed summary of operational considerations. These include the requirement to establish the following: links between liquidity providers and DCMs/SEFs; eligibility checks/limit maintenance and control infrastructure; interfaces at execution time for risk management and reporting, internal as well as external for the DCM, SEF, FCM and market participants; reference data input/infrastructure and controls, such as USI/UPI/LEI field addition to existing field; and audit infrastructure build.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, not all swaps that are suitable for clearing are suitable for being subject to the mandatory DCM or SEF execution requirement. From a process point of view, however, it would be appropriate to coordinate the way in which some key changes to swaps market infrastructure are introduced, namely clearing and mandatory DCM and SEF execution.

We believe it is necessary for the final rule to provide that the CFTC, or other independent body, makes the MAT determination. The current rule provides for the each DCM or SEF to make that determination. A DCM or SEF, which can expect to derive a revenue stream from mandatory execution fees, is at risk of being over-inclusive in making the MAT determination. We realize that in the current environment the CFTC is under resource constraints. However, in our view the MAT determination is key to introducing stability in the new market structure and deserves the full attention of the CFTC.

The CFTC has issued rules² governing the implementation of mandatory clearing. The key to these guidelines is a process under which DCOs file an application with the CFTC. The application initiates a 90-day determination period, which includes a 30-day public comment period. Once the CFTC makes the determination, a staggered implementation timeline (90, 180 and 270 days) allows different market participants to prepare for and implement compliance with

¹ See CFTC Proposed Rule, "Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA", 76 FR 58186 (available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-24124a.pdf>).

² See CFTC Proposed Rule, "Customer Clearing Documentation and Timing of Acceptance for Clearing", 76 FR 45730 (available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-19365a.pdf>).

the new requirement. We believe a similar process is appropriate for the CFTC. This view was shared by most of the participants in the CFTC Roundtable³.

2. Only the CFTC or another regulatory or independent body, but not DCMs or SEFs, is suitable for making the economically equivalent determination. The determination of economic equivalence should be subject to public review:

Under the proposed rules, each DCM or SEF would make the determination as to which swaps are economically equivalent to those subject to the MAT determination. In our view, only the CFTC or another regulatory or independent body, but not DCMs or SEFs, is suitable for making the economically equivalent determination. This determination is key to a prudent implementation of the new execution requirement. An over-expansive interpretation could have a significant impact on liquidity and could amount to an implicit ban on trading certain swaps, as they could not be traded off the SEF due to the economic equivalence determination but there would not be enough liquidity to trade them on a SEF. Only swaps that are fungible (including the same tenor and duration) with the swap type for which the MAT determination is made can be subject to the mandatory DCM or SEF execution requirement.

3. The timelines in the proposed rule do not provide for sufficient time for market participants to establish links into a DCM or SEF following the MAT determination:

Under the proposed rules, each DCM or SEF would make the MAT determination. This could happen under the self-certification powers of the DCM or SEF, which provide for a 10-day notice period to the CFTC pursuant to CFTC Regulation 40.6. Under the proposed rules, market participants would then have 30 days to connect to the relevant DCM or SEF, because once a swap is MAT on one DCM or SEF, all economically equivalent swaps must be traded on a DCM or SEF. There does not seem to be a process contemplated for notifying market participants either of the MAT submission or of the MAT determination. Even assuming that market participants know about the MAT determination on the first day on which the submission is made to the CFTC, the practical effect of this rule is that within 40 days of first hearing of the existence of a DCM or SEF, market participants may be required to transfer all their trading in the relevant swap and all economically equivalent swaps onto that SEF or DCM. In our view, that cannot be the intended meaning of the rules and for this reason we have outlined the proposed process set out above, and we are available to provide further input in person or through additional comments.

4. Operational considerations:

We list below some of the operational considerations that have to be addressed in order to establish connectivity with a DCM or SEF. In our view, there are compelling reasons supporting an appropriate public consultation period prior to the MAT determination being made, and an appropriate time for implementation following the MAT determination. We set out some of these reasons below:

³ See CFTC Staff Public Roundtable to Discuss the "Available to Trade" Provision for Swap Execution Facilities and Designated Contract Markets, January 30, 2012 (available at http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff013012).

Liquidity providers need to link into DCMs and SEFs and provide liquidity

SDs, MSPs and other liquidity providers would need to build additional connectivity to interface with the DCM or SEF in order to share pricing and to establish the associated pre-trade and execution control environment. This is critical for the SEF to offer sufficient liquidity once the mandatory execution requirement is implemented for that type of swap and economically equivalent swaps.

Limit and eligibility checks: CCPs and FCMs need to establish connectivity

At the time of execution on the SEF, the SEF would need certainty regarding who is the clearer, and would need to be connected to it, either directly or through the clearing house. Several market participants are active in establishing pre-execution limit checks. This will increase market stability and provide clearing certainty pre-trading. Several market participants have expressed their concerns with "limit fragmentation", which could result from splitting a clearing limit across several execution or clearing venues. Real time connectivity between DCMs, SEFs, FCMs and DCOs is key to reducing latency and preventing limit fragmentation, as well as to introducing effective "kill switches" (i.e., cease trading orders, in case of emergency). This can be done through effective coordination between all parties involved, but building and testing this infrastructure and linking it to a new SEF or DCM requires time.

Risk management interfacing

The role of the middleware flows and architecture in and out of the SEF have not been agreed to date, and different DCMs and SEFs often have different approaches. Depending upon which market's convention ultimately prevails this would result in either an upgrade to an existing platform or a new build for several market participants, DCOs, SEFs and DCMs.

Trade data reporting pipelines have to be built and maintained. They have to be compatible

DCMs and SEFs⁴ will report transactions executed on their system, but market participants may still be responsible for reporting individual transactions (e.g., if the DCM or SEF fails to report) or for providing aggregate portfolio data to regulators. Market participants will have to connect to DCMs and SEFs so that they can satisfy any reporting requirements.

Key components of the reporting connectivity are still in the development stage. By way of example, these are: the new Unique Swap Identifier (USI) (unique code per trades); Unique Product Identifier (UPI) (unique code per product); and Legal Entity Identifier (LEI). DCMs and SEFs will require links into the infrastructure and testing to ensure that they are compatible with it. Timing and distribution of the codes will have to be coordinated. Adding these new reference codes into the information flows and systems between each DCM or SEF and their participants will require ongoing maintenance well past its initial implementation.

In order to comply with the reporting requirement, the DCM or SEF may require additional information from the executing parties. This will have to be provided within a very tight timeline.⁵

⁴ CFTC Final Rule, "Swap Data Recordkeeping and Reporting Requirements", 77 FR 2136 (available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf>).

⁵ DCMs and SEFs are required to report swap creation data "as soon as technologically practicable after execution of the swap" under Regulation 45.3. Similarly, SDs and MSPs will ultimately be required to

Establishing these links will require significant investment of time and resources, as well as testing.

Auditing

Internal audit processes have to be designed, implemented and tested.

We believe the foregoing proposal would appropriately address the CFTC's primary concerns and fulfill Congress's intent to address activity that could lead to biased judgment or any other activity that would contravene the core principles of open access and the business conduct standards described in the Act.

Thank you for the opportunity to comment publicly on these important matters. Please contact J.P. Morgan should you wish to discuss these matters in greater detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Gensler", is written over a light blue horizontal line.

Managing Director
J.P. Morgan

Cc: Chairman Gary Gensler
Commissioner Bart Chilton
Commissioner Scott O'Malia
Commissioner Jill E. Sommers
Commissioner Mark Wetjen

report off-facility swaps subject to mandatory clearing as soon as technologically practicable but no later than 15 minutes following execution.