



February 17, 2012

VIA E-MAIL

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

Re: Responses to Requests for Comments on Core Principles and Other Requirements for Swap Execution Facilities Proposed Rulemaking (RIN 3038-AD18) and Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade (RIN 3038-AD18)

Dear Mr. Stawick:

Eaton Vance Management ("EVM")¹ is submitting this letter in response to the Commission's specific requests for comment contained in the Core Principles and Other Requirements for Swap Execution Facilities notice of proposed rulemaking² ("SEF Requirements Release") and Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade notice of proposed rulemaking³ ("Available to Trade Release")(collectively referred to as the "Proposed Releases"). Below are certain requests for comment contained in the Proposed Releases and EVM's responses.

¹ EVM is a subsidiary of Eaton Vance Corp. (NYSE: EV), which is one of the oldest investment management firms in the United States, with a history dating back to 1924. EVM and its affiliates managed \$184.5 billion in assets as of December 31, 2011, offering individuals and institutions a broad array of investment strategies and wealth management solutions. Eaton Vance Corp. conducts its investment management activities primarily through two subsidiaries, EVM and Boston Management and Research, which provide investment advisory and/or administration services to various Eaton Vance clients, including registered investment companies. EVM operates under the Commodity Futures Trading Commission's (the "Commission") Regulation 4.14(a)(8) exemption from registration under Regulation 4.13(a)(3) or 4.13(a)(4).

² *Core Principles and Other Requirements for Swap Execution Facilities*, 76 FR 1214 (January 7, 2011).

³ *Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade*, 76 FR 77728 (December 14, 2011).

Request for Comment: In light of the “multiple participant to multiple participant” requirement, the Commission has proposed that requests for quotes be requested of at least five possible respondents. Is this the appropriate minimum number of respondents that the Commission should require to potentially interact with a request for quote? If not, what is an appropriate minimum number?⁴

EVM Response: If the originator of a request for quote (“RFQ”) is required to disclose its trading intent to a minimum of five possible respondents, EVM believes such disclosure to multiple dealers will harm the originator’s ability to trade in a cost effective manner and would be detrimental to investors in EVM’s funds. EVM believes that allowing an RFQ from a single participant is consistent with the goal of providing improved transparency because the response to that RFQ would be included in the composite quote of the swap execution facility (“SEF”). For these reasons, EVM strongly supports that the minimum number of required RFQ respondents be one.

Request for Comment: 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?⁵

EVM Response: In order for the swap market to continue to function properly, EVM strongly believes the “made available to trade” (“MAT”) requirements should be based on objective criteria that are consistently applied. The Commission’s approach, as set forth in the Available to Trade Release, provides broad discretion to the SEFs and designated contract markets (“DCM”) in determining whether a swap is MAT. In identifying eight factors⁶ for determining availability to trade, the Commission states that “no single factor would be dispositive, as the SEF or DCM may consider any one factor or several factors to make a swap available to trade.”⁷ As proposed, SEFs and DCMs could make a MAT determination based on any one of the eight identified factors, the eighth being particularly too broad by referring to “any other factor that the SEF or DCM may consider relevant.”⁸ EVM believes the eighth factor is too subjective and gives rise to a potential conflict as SEFs and DCMs generally will be incentivized to require that swaps trade without sufficient rationale. Therefore, EVM recommends that the eighth factor be removed. In addition, the proposal does not appear to provide the Commission with sufficient authority to make a determination against the SEF or DCM that a swap should not be available to trade. As a member firm of the Investment Company Institute (the “ICI”), EVM

⁴ SEF Requirements Release at 1221.

⁵ Available to Trade Release at 77733.

⁶ *Id.* at 77732. These factors are: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions on SEFs, DCM, 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. Proposed Rules 37.10(b) and 38.12(b).

⁷ *Id.*

⁸ *Id.*

supports the recommendations included in the ICI comment letter to the Commission⁹ regarding an appropriate approach to MAT requirements, including mandatory and objective standards. EVM also strongly supports the recommendation that all market participants have adequate time following a final MAT determination to prepare their systems and procedures before the swap is required to be traded. EVM believes that an implementation period of at least six months should be required after a swap is certified and required to trade.

Request for Comment: Should the Commission allow a SEF or DCM to submit an available to trade determination under §§ 37.10(a) or 38.12(a), if such SEF or DCM does not itself list the subject swap for trading? If so, in evaluating the factors under §§ 37.10(b) or 38.12(b), should the Commission allow the 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?¹⁰

EVM Response: No, the Commission should not allow a SEF or DCM to submit a MAT determination if it does not list the subject swap for trading. As discussed below, the proposed definition of an economically equivalent swap is too broad. EVM believes that allowing a SEF or DCM to MAT an economically equivalent swap could result in situations where trading must occur over a SEF or DCM that does not function properly and does not adequately support the middle- and back-office operations of a trade which would be detrimental to the buy-side. If a SEF or DCM is permitted to submit a MAT determination for an economically equivalent swap, EVM believes it should be required to list the economically equivalent swap for a reasonable period of time (*i.e.*, more than a month) to demonstrate that it meets the eligibility requirements for a MAT determination. This probationary period would have two benefits: (1) demonstrate that the swap is liquid enough to trade on a SEF or DCM and (2) show that the SEF or DCM's infrastructure is sufficient to meet the needs of the buy-side. If the infrastructure is poor, liquidity will be jeopardized.

Request for Comment: 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? Should the Commission require that DCMs and SEFs consider specific material pricing terms? If so, what terms and why? For instance, should DCMs and SEFs consider same tenor or same underlying instrument? Should the Commission or DCMs and SEFs make the determination of which swaps are economically equivalent?¹¹

EVM Response: The proposed definition of an "economically equivalent swap" is likely to result in swaps being made available to trade that are not truly the economic equivalent of swaps for which a MAT determination has already been made. EVM recommends a swap only be deemed to be the economic equivalent of a MAT swap when the terms of the two swaps result

⁹ Investment Company Institute Comment Letter dated February 13, 2012 on Swap Available to Trade Release ("ICI Comment Letter") available at <http://www.ici.org/pdf/25910.pdf>.

¹⁰ Available to Trade Release at 77733.

¹¹ *Id.* at 77734.

in the same cash flows (*i.e.*, the swaps have the same payment amounts due at the same time over the life of the swaps). In other words, the two swaps would be fungible and mutually off-settable. EVM also recommends that the Commission be required to make the determination that a particular swap is economically equivalent to a MAT swap. As noted above, determinations by SEFs and DCMs raise conflict of interest concerns. As such, the Commission, as a non-interested party, is most appropriate to make an economically equivalent determination.

Request for Comment: Is the Commission's proposal that DCMs and SEFs conduct reviews and assessments appropriate? If not, what is appropriate and why?¹²

EVM Response: EVM supports the Commission's proposal on the SEFs and DCMs review and assessment requirements. It further supports the additional requirements proposed in the ICI Comment Letter.¹³ Moreover, EVM proposes that SEFs and DCMs should be required to affirmatively report in their reviews and assessments each factor under §§ 37.10(b) and 38.12(b) that a swap meets for it to continue to be available to trade.

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EVM appreciates the opportunity to comment on the Proposed Releases. If you have any questions or wish to discuss the above comments further, please feel free to contact me at 617-482-8260.

Sincerely,



Payson F. Swaffield, CFA
Chief Income Investment Officer

¹² *Id.*

¹³ See ICI Comment Letter, *supra* note 9.