SWAPS & DERIVATIVES MARKET ASSOCIATION

March 12, 2012

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

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

Dear Mr. Stawick:

The Swaps & Derivatives Market Association ("SDMA") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "CFTC") on the CFTC's Notice of Proposed Rulemaking regarding RIN 3038-AD18 **Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade**.

The SDMA is a non-profit financial trade group formed in 2010 to support the goals of the Dodd Frank Act. It believes that systemic risk of OTC derivatives can be mitigated through their regulation, the creation of central clearing, and by ensuring open and transparent access to ensure greater competition, lower transaction costs and greater liquidity. The SDMA is comprised of many US and internationally based broker-dealers, investment banks, futures commission merchants and asset managers participating in all segments of the exchange-traded and over-the-counter derivatives and securities markets.

Introduction

If we are to properly mitigate the still sizable systemic risk associated with the $600 Trillion swaps market, then mandatory trading of swaps on Swap Execution Facilities (SEFs) is without a doubt, equally as important as compulsory swap clearing in centralized clearing venues or Derivative Clearing Organizations (DCOs). To be sure, it was the very lack of trade transparency, dispute over swap valuation and significant loss of liquidity, as incumbent dealers recoiled from market making that permitted the swaps execution landscape to act as a destabilizing accelerant during the Global Financial Crisis of 2008.

To address these issues Congress, with its passage of the Dodd Frank Act of 2009 ("DFA"), now requires that most swaps trade on transparent execution venues like SEFs or Designated Contract Markets (DCMs). [1] Thankfully, a number of SEFs or DCMs have announced their intention to facilitate the trading of swaps such that, with the resultant increased pre-trade transparency, liquidity will increase and systemic risk lessen, as new dealer and end user participants enter the market to compete, trade and make markets.

Four years after the Global Financial Crisis of 2008, it cannot be understated that, with the recent manifestations "crisis amnesia", rule makers should continue to stand vigilant and protect SEF autonomy from certain interests that would otherwise see the swap markets continue to remain opaque, limited in participation, access and liquidity. Only by protecting SEFs and the pre trade transparency that they represent, will systemic risk be properly mitigated.

Rule makers should be mindful that Congress granted SEFs the right to determine what is appropriately offered to trade on their platforms. Any proposed Made Available for Trading ("MAT") rule, however thoughtful, may have the unintended consequence of limiting fair dealing and innovation in general, and restricting pre-trade transparency and liquidity in particular.

With respect, the SDMA believes that the CFTC should appropriately apply the statute as written and recognize that the SEFs are best suited to decide which cleared swaps should be *offered for trading* on their platforms. The SDMA believes that liquidity tests, already performed as part of the DFA's five factor "Made Available for Clearing" (MAC) test at the DCO are <u>more than sufficient</u>. That when MAC liquidity tests are considered in conjunction with the flexible SEF execution methods of CLOB and RFQ--that accommodate both liquid and non-liquid swaps trading—SEF trading of cleared swaps will have their intended effect of <u>increasing</u> liquidity and <u>lowering</u> transaction costs as transparency and fair dealing encourages the influx of new market makers and end users. As discussed in this paper, the SDMA urges the CFTC to streamline the SEF MAT procedure whereby 1) the SEF be required to notify the CFTC under part 40 of the swap *class* it will trade, 2) that the CFTC MAT review process be 10 days, but be based solely on swap class clearability, 3) that public notice by the SEF and CFTC be made, and 4) that SEF MAT annual certifications with the CFTC be based solely on continued swap class clearability.

Also in this paper, the SDMA considers the broader re-proposed SEF MAT rule as written in concert with the MAT submission, review and certification process. Importantly, in its analysis of the proposed MAT rule, the SDMA addresses <u>several key questions</u> posed by rule makers in the *Federal Register*, namely the *economically equivalent* definition and proposes a <u>five</u> factor test for Material Pricing Terms (MPT) as a practical approach for regulators.

Congress Grants the SEF the Right to Decide

That Congress granted the SEF the right to determine which clearable swaps it trades in the *Dodd Frank Act* is clear. The express language of the Act states:

> With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—
>
> (i) execute the transaction on a board of trade designated as a contract market under section 5; or

[1] For the purposes of this paper, "SEF" shall mean both SEF and DCM, unless otherwise stated.

(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f)[sic] of this Act.2

The plain language of the Act therefore requires that counterparties must "execute the transaction on a swap execution facility…" for swaps that are subject to the clearing mandate.[3] Importantly, Congress requires the counterparties "shall" execute on SEFs. Congress did not say "may" execute on SEFs. Such wording, some have argued, would give the market participant a choice. Simply put, Congress was clear. Clearable swaps must trade on a SEF.

The sole determinant of the SEF execution requirement in *Section 723(a)* is whether the swap *clears*. The section posits two exceptions. First, the swap is exempt from mandatory SEF execution if the swap does not clear. Second, the swap is exempt from mandatory SEF execution if the counterparty is not required to clear. Both exceptions to mandatory trading on SEFs are clearing not liquidity specific.

To be sure, Congress does ask another more practical question—does the SEF offer the clearable swap on its platform for execution? Logically, counterparties cannot be mandated to trade a swap class on SEFs, if no venue offers the class for trading or "makes the swap available." Yet, this is a practical test, not a policy based test and should not be interpreted as such.[4]

Certain parties have argued that because Congress did not use the term "list" a swap for trading, an exchange based term, clearly "made available for trading" implies something different, something more stringent. In fact, some advocates of this belief argue that the lack of the word "list" may actually remove the swap trading determination either somewhat or entirely from the SEF. The SDMA believes that such inferential leaps from the statute are misplaced, without any legal merit — may even be extreme — and ignore the express language and intent of Congress.

Congressional Intent is Clear

If Congress had required the CFTC to create a swap tradability test for SEFs, also known as a *made available to trade* (MAT) test, it would have explicitly required such a specific procedure or MAT test in the *Dodd Frank Act*.

Congress was certainly clear when it prescribed the process for DCO *made available for clearing* (MAC) determinations. Under the statute, DCOs must perform a *five factor* MAC test. First, DCOs must prove the existence of significant notional exposures, trading liquidity and pricing data. Second, DCOs must have operational expertise to clear the swap on terms consistent with the way the swap is traded. Third, the DCO must consider systemic risk mitigation and market size for such a swap. Fourth, The DCO must consider the effects on competition, including the clearing fees applied. Lastly, the DCO must

[2] Dodd-Frank Act § 723(a), amending the Commodity Exchange Act ("CEA") § 2 by adding subsection (h)(8).
[3] Ibid.
[4] That SEFs might not offer swaps for trading was clearly a serious consideration of lawmakers. Congress feared that SEFs might act not in the economic interest of themselves but in the economic interest of others. Thus to protect against this, Congress was mindful to ensure that DCOs and SEFs were properly autonomous in ownership and control by imposing statutory conflicts of interest protections in *Dodd Frank*. Specifically, with regard to ensuring SEFs did make swaps available to trade, the statute also required that regulators perform annual reviews of SEF offerings and that indeed, regulators could even require certain swaps to trade on SEFs as regulators saw fit.

demonstrate a reasonable legal certainty in the event of DCO insolvency with regard to customer positions, funds and property. [5] This statutory MAC test is specific, detailed and clear.

Why does Congress require no such equivalent *made available for trading* or MAT test of SEFs in the statute? Congress could have been specific and granted rule makers a statutory basis for a SEF MAT test. Congress could have outlined a detailed MAT test that considered notional exposures, trading liquidity and pricing data for the SEF trading mandate.

The reason Congress declined to mandate a specific MAT test is clear—such a liquidity test is already in the statute and to offer it twice would be duplicative. The test is performed in two factors of the five factor DCO MAC test. Whether there is enough liquidity to facilitate trading of the swap class on a SEF is directly addressed here. The statutory MAC test first requires that DCOs demonstrate to rule makers that there is enough 1) notional exposures 2) trading liquidity and 3) pricing data. In part three of the DCO MAC test, the DCO is required to demonstrate significant market size for a swap.

DCO MAC and Additional DCO Risk Tests More Than Sufficient

The DCO MAC test is thorough and directly considers swap and swap class liquidity for itself and the SEF. Not only does the test require consideration of market size and notional exposures, it also considers direct liquidity and price data tests. Such tests already consider *trade* volumes of a particular swap class to return volumes, trade ticket count, and average ticket size and trade frequency over a particular time interval.

The liquidity tests also consider certain swap actionable *order* data, and may even consider available "market depth" and "market breadth" observed over particular time intervals. *Market Depth* is defined as the sum of available bids or offers at the *current price* or *near current price* for a particular swap at a particular time in the market. *Market Breadth* is the sum of market depth for the particular swap or swap class in addition to the available market depth from swaps economically equivalent to the focus swap or swap class. With regard to Market Breadth, it is possible to also consider the market depth of available non-swap hedging proxies.[6] For example, when considering non-callable, US dollar denominated, Libor indexed interest rate swaps, it would be appropriate to consider the liquidity of Eurodollar or Treasury futures, because both futures are typically used as hedging to tools for that class.

To be sure, DCOs perform additional liquidity tests in excess of the statutory requirements in an effort to demonstrate risk prudence and DCO product differentiation. Certain DCOs interestingly consider the *source* of swap liquidity (*actionable* bids and offers) for swap curves supplied to the DCO for mid-day, end of day marks and the default management process. Under certain DCO risk management procedures that directly consider swap liquidity, certain DCOs require clearing members to obtain such actionable bids and offers only from a swap dealer desk directly *owned* or *affiliated* with the participant clearing member firm. Such DCOs prohibit clearing members from sourcing such liquidity from third party firms. Argued by many to be nothing more than a facile attempt to limit clearing membership to all but a few swap dealers, DCO risk committees have defended such a practice citing that not only is the actionable liquidity delivered to the DCO a central component to its risk management process, but that the *provenance* of such a bid or offer is equally as important.

[5] Dodd-Frank Act § 723(a), amending CEA § 2 by adding subsection (h)(2)(D).

[6] See SDMA Comment letter regarding Block Trade Thresholds (dated 2/2/12) for a more complete analysis of Market Depth and Market Breadth.

Nonetheless, even with limited FCM participation, it is important to note that all three major DCOs currently have *at least twelve* well capitalized and proficient swap desks not only daily providing liquidity to the swaps that the DCO clears, but they are mandated to provide liquidity even under times of great duress.

To be sure, the DCO considers several rigorous liquidity factors to demonstrate to the market and to regulators that not only is there *minimum amount of liquidity* in the swap class, but fundamentally, more than enough liquidity exists in the swap to cover all low liquidity events, such as the default or liquidation of an FCM in the DCO default management process, before a swap is properly accepted to be cleared. Whether the liquidity of a swap class is considered directly in the MAC statutory requirement or through supplemental DCO tests, the DCO has no doubt properly vetted the liquidity of a swap candidate for both the DCO and the SEF.

SEF MAC Test Duplicative & Burdensome
To require that SEFs perform the proposed eight factor MAC would be duplicative, burdensome and costly. The CFTC currently proposes the following SEF MAC Test:

> (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

Such MAT test determinants are mostly all liquidity specific and are duplicative of the five factor MAC test. MAT item *one* considers the number of dealers willing to provide liquidity. MAT items *two*, *three*, *five* and *six* all consider trade frequency, transaction size, depth of resting bids and offers and could include market breadth exactly like DCO MAC test discussed above. Specifically, these MAT determinants exactly mirror DCO MAC test item *one* that requires that DCOs demonstrate "the existence of significant notional exposures, trading liquidity and adequate pricing data."[7] MAT items *one* and *four* directly mirror the DCO MAC item *three* that calls for DCOs to consider "the size of the market for such [a] contract."[8]

Not only does the eight factor MAT test directly mirror *two of the five* DCO MAC test factors, it is evident that the DCO MAC test considers more than the *minimum amount of liquidity* in the swap clearing determination. In fact, because, for example, it actually considers bid and offer order provenance, that must perform under the duress of the clearing member liquidation, the DCO MAC is arguably a superior test.

Because the SEF MAC test is duplicative of the DCO MAC test, it would be inefficient and burdensome to impose on SEFs. SEFs and swap clearing are new to the market place. SEFs are innovators that serve a prudential need in lessening systemic risk of the swap market by increasing pre-trade transparency and

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[7] Dodd-Frank § 723(a), amending CEA § 2 by adding subsection (h)(2)(D).
[8] Ibid.

encouraging greater dealer and buy-side access to foster increased market liquidity. To require that a SEF administer a test that has already been performed by the clearing house would be a misallocation of valuable resources. It would also stifle innovation.

SEF Execution Methods Accommodate Low Liquidity

Certain strict SEF MAT proponents have argued that rule makers should be careful that SEFs do not destroy liquidity by offering swaps that curiously, may have enough liquidity to clear, but not enough to trade on a SEF. Such an argument, however, is misplaced, not supported by any data or empirical study and ignores not only the strength of the DCO test, but also fails to consider the flexibility of SEF execution method in common use today. They are the CLOB and RFQ execution method.

The *Central Limit Order Book* (CLOB) execution method currently is deployed in the swaps market, whether it is screen or voice based. Specifically, order driven CLOB trading is the primary execution method used in the wholesale swap market today that represents about 40% of the entire market. Market participants, dealers and buy-side alike, can leave resting bids and offers in the "book" or anonymously execute against the *lowest* offer or *highest* bid.

To be sure, the CLOB method accommodates both the rapid and high frequency trading of the electronic marketplace for standardized swaps. Interestingly though, the CLOB method also accommodates the less liquid, more bespoke swap product that requires the voice-hybrid broker to "walk" the bidder and offer into consummate a trade in a much slower trading environment. Notwithstanding the fact that incumbent dealers are loathe to permit buy-side access to the CLOB execution of swaps (because it permits dealer disintermediation and potential loss of revenue), the CLOB method certainly permits the trading of swaps today whether they enjoy high or low liquidity.

An alternative to CLOB based trading is the *Request for Quote* (RFQ) method. With this quote driven execution method under the current CFTC proposal, customers would routinely query five dealers of their choice to receive five prices — or "one sided markets." Dealers prefer this method because it protects the margin or "bid offer" spread. This method is extremely flexible for bespoke swap product trading. Customers can build a request for quote query by specifying up to 40 unique swap attributes including: size, tenor, index, index rest frequency, optionality, and amortization to name but a few. It is also *quote* not *order* driven, thus is routinely used for less liquid swap product whose liquidity may be episodic. The RFQ method is used today for the majority of the swap market, the dealer to customer marketplace, is flexible and accommodates even the trading of even the most illiquid of swaps.

Both the CLOB and RFQ method clearly accommodate all liquidity scenarios in the swap market. When the empirical evidence of the todays bilateral marketplace is considered—where both methodologies are dominant — any fear of swap liquidity loss, as swaps migrate to the cleared SEF marketplace, should be dispelled. The SDMA believes that both methodologies taken in tandem with an already rigorous DCO MAC test should negate the need for a CFTC mandated SEF MAT that considers anything other than the clearability of the swap or swap class.

SDMA MAT Recommendations

The SDMA recommends that the CFTC streamline its CFTC MAT proposal. The SDMA recommends the following:

1) Under Section 40.2 or 40.3, the SEF files a swap for listing;
2) Under Section 40.5 or 40.6, the SEF files a rule amendment by voluntary submission for Commission review or self-certification, respectively;

3) In its rule submission the SEF asserts MAT requirement based on solely whether the swap clears;
4) The CFTC verify MAT swap clearability or accepts SEF self-certification;
5) The CFTC and the SEF notify the public of swap MAT.
6) Annual SEF certification based on continued swap clearability.

The SDMA believes that this approach is the correct way to approach SEF MAT process. Such a process is streamlined because it uses existing procedures under Section 40. Moreover, this process for swap MAT is based on whether a clearing house already clears the swap or swap class in question. The process is thorough because it addresses certain liquidity thresholds from the statutory DCO MAC test and it informs the public that the mandatory trade execution requirement has been triggered. Importantly this process is consistent with Congressional intent, promotes trading of SEFs and will increase liquidity.

Proposed CFTC MAT Process Considered

The SDMA believes that the SEF is best suited to determine what should trade on its platform. It believes fundamentally that because the DCO MAC test considers liquidity of the swap, the mandatory trade execution requirement for a swap is triggered once that swap becomes clearable. Further, fears of reckless SEF behavior or negative effects on liquidity are misplaced because both SEF CLOB and RFQ execution methodologies accommodate even the lowest liquidity swap.

That said, assuming that the CFTC Proposed Rule is adopted mostly in its current form, in this section, the SDMA considers certain suggested improvements, while also attempting to answer certain questions posed by rule makes in the Federal Register.

CFTC Eight Factor Test

The SDMA recommends that the CFTC grant SEFs broad discretion in demonstrating swap liquidity considerations to comply with this rule. The eight factor MAT test considers liquidity in terms of *trade* data and *order* data. Trade and order data should be certainly be used from the bilateral markets because that is where the swap market currently trades. With regard to order data, the SDMA recommends that SEFs are permitted to use both *market depth* and *market breadth* tests.[9] Finally, to encourage innovation, rule makers should be mindful to be appropriately flexible with regard to new swap products. Discussed in greater detail below--for new products to immediately trigger the mandatory trading requirement, rule makers should consider such new swaps as a function on economic equivalence and hedging tools used to management the swap.

Economically Equivalent & the Notion of Class

Viewing swaps as a class and *not* as separate instruments that need to be considered individually in a vacuum is fundamental to the proper understanding of how swaps trade, are hedged and are deployed by end users. Moreover, *economic equivalence,* where one SEF may consider a similar swap that is traded on an alternative SEF platform in its listing process, is critical in fostering liquidity, lessening the MAT burden and expediting the process. Permitting a SEF to “piggy back” on the MAT approval process of another is not only efficient, but also limits the burden on regulators.

[9] See SDMA Comment letter regarding Block Trade Thresholds (dated 2/2/12) for a more complete analysis of Market Depth and Market Breadth.

The CFTC was correct to consider *economic equivalence in terms of* material pricing terms (MPT). To the end, the SDMA proposes a *five factor MPT* test that considers factors that are essentially *class* based for *economic equivalence.* MPT should be a function of the following variables:

1) Currency;
2) Index (e.g. Libor, Euribor etc);
3) Linear Swap (e.g. Callable, Non-Callable);
4) Bespoke? Consider its subcomponents;
5) Hedge similarity, are the hedge vehicles MAT and subject to execution requirement?[10]

Based on this test, interest rate swaps that are US dollar denominated, Libor Indexed, non-callable swaps of all tenors or maturities would be of a single class and *economically equivalent* to each other.

In addition, swap class or *economic equivalence* should be borne out by how swap dealers and market practitioners currently trade and hedge a group of swaps. Market makers routinely hedge one swap with another or with a basket of others within a given class. For example, a swaps trader may hedge a dollar denominated, Libor indexed, 2.875 coupon, 4.6 year swap with a duration weighted basket of *three* year and *five* year par swaps to hedge its risk. A swaps dealer could also use a duration weighted basket of *one* and *30* year swaps to hedge the same 4.6 year swap. We argue that because each one of these swaps could be used to hedge another, the liquidity of all such swaps should be taken together to arrive at MPT and economically *equivalence.* Simply put, if one swap is used to hedge another, then it has material pricing terms and is economically equivalent to the others.[11]

The same can be applied to more exotic swaps. For example, a $1,000 million US dollar, Libor indexed, 10 year amortizing swap that pays down notional of $100 MM each year is nothing more than ten layers of $100 million notional, Libor indexed non amortizing swaps. Thus, the question is — can the exotic swap be hedged with more vanilla swaps? If the answer is yes, then the exotic swap in question has *material pricing terms* to the more vanilla class and is *economically equivalent.*

In other words, the *MAT for the exotic swap* is made by the MAT determination of the swaps used to hedge it. If these components, hedge swaps are subject to the trade execution mandate, then the exotic swap is also.

Fungibilty Considered

By contrast, some have argued that *economic equivalence* should be a function of strict *fungibilty.* Fungibilty argues that only swaps that are identical in *every* way including currency, index, coupon, tenor should be viewed as equivalent to each other. In our earlier example, only the dollar swap with a 2.875 coupon and a 4.6 year tenor would be viewed to be *economically equivalent.*

But such an approach ignores how swap dealers and market practitioners currently trade and hedge interest rate swaps and most other fixed income products today. Swaps are traded on a portfolio basis or class, where the individual nominal value of the swap cash flows is mostly ignored and instead the *modified duration* of the cash flow stream is considered and hedged. Using modified duration is more accepted today and has long permitted market practitioners to ignore nominal cash flow effects and focus on their overall effect in the portfolio. Fungibility ignores this concept.

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[10] Rule makers should consider swaps bilateral swaps with regard to the MAT MPT test.

[11] The SDMA comment letter (2/2/12) with regard to Block Trade Thresholds considers hedging and market breadth across class in more detail.

Such a fungibilty approach also suffers from some practical limitations. By the same argument, SEFs would have to submit MAT requests on *each* dollar based, Libor indexed swap between 1 year and 30 year in maturity. SEFs would be burdened with the byzantine requirement to justify measured liquidity in each of these swaps. Indeed, also regulators would be charged with the curious requirement of their review. But because you could have an infinite number of swap coupons (between 0 and N) for each of the 10,440 maturity days between 1 year and 30 years, how would this work?

The SDMA believes that such a fungibilty approach is not practical and is based on assumptions not shared in the swaps market today. To better appreciate this, one need only consider how DCOs currenlt list their swaps for clearing. They list them by class, not as individual swaps.

To conclude, the five factor MPT model directly addresses economic *equivalence* by considering swaps within a given class, while also considering the liquidity and MAT status of their underlying swap components or hedging vehicles.

In Response to Other Rule Maker Questions in the *Federal Register*

SEFs making MAT Requests for Swaps not Listed

SEFs should be permitted to request MAT status for swaps that they do not list. Such an approach is an asymmetric positive for the market and should be encouraged. If a SEF decides to engage the burden of MAT for swaps it will not list, and assuming such swaps meet the MAT test, then shouldn't the broader market benefit?

SEFs should not be compelled to list all MAT Swaps

SEFs have an enterprise right to self-determination. SEFs should only list swaps that are made available to trade and in which they have preference and a core competence. Requiring SEFs to list all swaps subject to MAT, would be burdensome and have negative consequences. A SEF would suffer reputational risk if it could not muster critical mass of liquidity or demonstrate a core competence in the particular swap class. Customers would not be benefitted by a SEF that did not want to trade a particular swap class.

Public Notice of MAT

SEFs should post a notice and a copy of rule submissions on their Web site concurrent with the filing of the submissions with the Commission. Likewise, Commission, consistent with current practice, should also post SEF rule submission filings on its Web site. Any additional notice would be duplicative and have limited effect.

Effective Date of MAT and the Trade Execution Requirement

The SDMA believes that compliance with the trade execution requirement should be on the *earlier* of the following: 1) the applicable deadline established under the compliance schedule for the clearing requirement, or 2) 30 days after the swap is first made available to trade on either a SEF or DCM. The market has had two years to prepare for clearing and execution. The proposed phased in clearing mandate gives all market participants enough time to comply based on counterparty type. For those long only funds, the effective mandate extends 270 days beyond "T" or the mandatory clearing effective date. Such a phased in approach gives all market participants considerable flexibility and time to prepare.

Annual Certification of the Proposed Rule
Routine evaluation of swaps subject to the trade execution requirement on SEFs is prudent as the market evolves. The annual certification should be the same as the initial certification process. The frequency of twelve months is prudent and consistent with the statute. Any shorter a review period would be unduly burdensome on SEFs, result in limited value and be in violation of the statute.

Delist Process
Any delist process should only apply to the SEF in question and not be made universally. Logically, it is possible that one SEF succeeds with the listing while another fails. The successful SEF should not be penalized.

Conclusion
In this paper, the SDMA has considered the broader re-proposed SEF MAT rule as written in concert with the MAT submission, review and certification process. Importantly, in its analysis of the proposed MAT rule, the SDMA addresses <u>several key questions</u> posed by rule makers in the *Federal Register*, namely the *economically equivalent* definition and proposes a <u>five</u> factor test for Material Pricing Terms (MPT) as a practical approach for regulators.

Importantly, the SDMA fundamentally believes that liquidity tests, already performed as part of the DFA's five factor "Made Available for Clearing" (MAC) test at the DCO are <u>more than sufficient</u> for the trade execution requirement. That when MAC liquidity tests are considered in conjunction with the flexible SEF execution methods of CLOB and RFQ — that accommodate both liquid and non-liquid swaps trading—SEF trading of cleared swaps will have their intended effect of <u>increasing</u> liquidity and <u>lowering</u> transaction costs as transparency and fair dealing encourages the influx of new market makers and end users.

The SDMA urges the CFTC to streamline the SEF MAT procedure whereby 1) the SEF be required to notify the CFTC under part 40 of the swap *class* it will trade, 2) that the CFTC MAT review process be 10 days, but be based solely on swap class clearability, 3) that public notice by the SEF and CFTC be made, and 4) that SEF MAT annual certifications with the CFTC be based on solely continued swap class clearability.

Respectfully Submitted,

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