

August 27, 2012

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

Re: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act – 77 Fed. Reg. 41213 (July 12, 2012)

Dear Mr. Stawick:

Tradeweb Markets LLC (“*Tradeweb*”) welcomes the opportunity to comment on the proposed interpretive guidance and policy statement (the “*Proposed Guidance*”) issued by the Commodity Futures Trading Commission (“*Commission*” or “*CFTC*”) regarding the cross-border application of certain swaps provisions enacted pursuant to Title VII of The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “*Dodd-Frank Act*”).¹

Since 1998, Tradeweb has offered a regulated electronic trading system for over-the-counter (“*OTC*”) fixed income investors in the United States and abroad and has played an important role in providing greater transparency in and improving the efficiency of the trading of fixed income securities and derivatives. Indeed, Tradeweb has been at the forefront of creating electronic trading solutions which support price transparency and reduce systemic risk, the hallmarks of Title VII of the Dodd-Frank Act, and, accordingly, Tradeweb is supportive of the Dodd-Frank Act and its stated policy objectives relating to Title VII. Tradeweb has been an active participant in the ongoing public debate around swap execution facilities (“*SEFs*”), how best to bring greater transparency and accountability to the OTC derivatives market, and the implementation of Title VII of the Dodd-Frank Act. Tradeweb intends to register as a SEF pursuant to Section 5h(a) of the Commodity Exchange Act (“*CEA*”) as soon as possible.

Tradeweb currently operates a number of regulated platforms outside of the United States, including several multilateral trading facilities (“*TW MTFs*”), offering various types of swaps such as interest rate swaps, credit default swap indices and foreign exchange options with substantially similar functionality as offered to U.S.-based clients through Tradeweb’s U.S.-regulated entity. Based on the profile of the over one hundred seventy buy-side clients located outside of the United States who are trading swaps on non-U.S. platforms, we surmise that a number of such clients and/or the funds they operate would be “U.S. persons” as defined under the Proposed Guidance and others who would not be U.S. persons currently trade swaps on TW

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).



Mr. David A. Stawick

August 27, 2012

Page 2

MTFs with entities that Tradeweb expects will register as U.S.-based swap dealers and/or branches or affiliates thereof. As such, under the Proposed Guidance, many of the entity-level and transaction-level requirements related to swap transactions previously proposed and/or are adopted by the Commission would apply to the business conducted on Tradeweb's foreign platforms, in varying degrees.²

For these reasons and the reasons set out more fully below, Tradeweb has a significant interest in the cross-border application of the swaps provisions of the CEA and, with our background and experience in providing regulated electronic markets to OTC market professionals in the United States and abroad, we believe that we can provide the Commission with a unique and valuable perspective on the Proposed Guidance.

Applicability of Proposed Guidance to SEFs and DCMs

Tradeweb understands that the Proposed Guidance would require, among other things, that certain market participants who may be located outside the U.S. comply with transaction-level requirements (including trade execution requirements) – and thereby generally would require that the trading of mandatorily-cleared swaps occur on a SEF or designated contract market (“*DCM*”), unless no SEF or DCM makes the swap available to trade. As a result, we understand that under the Proposed Guidance, all market participants who would be either U.S. persons under the definition in the Proposed Guidance, entities required to register as U.S. swap dealers or major swap participants, or counterparties to any of the foregoing – which would include a number of swap dealers and buy-side clients of TW MTFs who are based outside of the United States – would be required to comply with the transaction-level requirements through a U.S. registered SEF or DCM, absent exemptive relief. For example, we understand the Proposed Guidance to require that a buy-side client currently participating on a TW MTF who would be a U.S. person under the Proposed Guidance and who enters into a swap transaction with a non-U.S. branch of a U.S.-based swap dealer generally would have to execute that swap on a SEF or DCM. Likewise, a buy-side client currently participating on a TW MTF who would not be a U.S. person under the Proposed Guidance and who enters into a swap transaction with a U.S.-based swap dealer also generally would be required to execute that swap on a SEF or DCM, assuming such swap is available for trading on that SEF or DCM.

As discussed more fully below, we encourage the Commission to consider and adopt an approach on an interim basis where such obligations can be discharged outside of the United States on a foreign affiliate of a SEF or DCM that is regulated by its home jurisdiction as an operator of a multilateral trading platform and has certified to the Commission that it has the

² We note, however, that this letter focuses on the applicability of transaction-level requirements to swap transactions under the Proposed Guidance, specifically the trade execution requirement, as described subsequently.



Mr. David A. Stawick

August 27, 2012

Page 3

minimum functionality required to be a SEF or DCM, subject to the Commission's review. Tradeweb believes that a "temporary exemption" regime of this type would meet the Commission's stated policy objectives with respect to the trade execution requirement, and we are concerned that in the absence of this type of approach, SEFs and DCMs will be required to register in each foreign jurisdiction in which they and/or their affiliates currently offer trading in swaps – which would be unnecessarily costly and time-consuming, and would lead to material market disruption for affected market participants.³ Such a temporary exemption, in conjunction with an expanded policy of substituted compliance would minimize these difficulties and enhance the likelihood of a smooth, orderly transition to the new regulatory regime.

Temporary Exemption

It is necessary to recognize that there will likely be a period of time in which the Commission's trade execution rules are effective while a number of non-U.S. jurisdictions' parallel rules are not. Additionally, even after those non-U.S. rules become effective, it may take some time for a non-U.S. affiliate of a SEF or DCM who operates a trading platform to register or otherwise qualify in its local jurisdiction, if so required. As a result, the Commission will for a time be unable to make a comparability determination with respect to such local jurisdiction's comprehensive scheme of regulation and, even after such a determination is possible, it may be impractical for such non-U.S. operators of trading platforms to immediately register or otherwise qualify in certain jurisdictions under the new regulatory regimes.

As a solution to this issue, we recommend that the Commission, in conjunction with our proposed expansion of the substituted compliance policy as described in detail below, implement a temporary exemption to substituted compliance whereby the Commission would allow swap transactions subject to the trading mandate to be executed on trading platforms that are neither SEFs, DCMs, nor registered in a foreign jurisdiction under a policy of substituted compliance, so long as those platforms are affiliates of a SEF or DCM that are regulated by their home jurisdictions as operators of multilateral trading platforms and have certified to the Commission that they have the minimum functionality required to be a SEF or DCM, subject to the Commission's review.⁴ To ensure that the TW MTF and other similarly-situated non-U.S.

³ In addition to regulatory burden and costs, Tradeweb (and other similarly-situated U.S.-based SEFs) would, from an operational perspective, need to commit additional resources to servicing these non-U.S.-based clients, including the cost of remaining open during global business hours, if such clients were not permitted to trade on a TW MTF (or on similarly-situated multilateral trading facilities).

⁴ Tradeweb wishes to make clear that this temporary exemption is not meant to be an exemption to the trade execution requirement, but rather an exemption to a requirement of having a registered SEF in foreign jurisdictions (or an equivalent registered entity under the substituted compliance policy) upon the effectiveness of the trade execution requirements, which may be impossible as a practical matter in some jurisdictions. Tradeweb also notes



Mr. David A. Stawick

August 27, 2012

Page 4

trading platforms have a sufficient amount of time to register or otherwise qualify in the appropriate capacity in a foreign jurisdiction and that the Commission has a sufficient amount of time to make a substituted compliance determination, Tradeweb recommends that this temporary exemption last for no less than six months following the effective date of parallel trade execution requirements in the applicable foreign jurisdiction.

Expanded Policy of Substituted Compliance

As previously mentioned, we believe that the Commission's regulatory objectives can be achieved in a way that is less disruptive of current market practice by expanding the "substituted compliance" regime that it has already included in the Proposed Guidance to a broader category of swap transactions. Specifically, the Commission has proposed a policy of substituted compliance with respect to certain market participants whereby these participants would be permitted to conduct business without complying with applicable requirements under the CEA or the Commission's regulations, on the basis of substituted compliance with comparable "home jurisdiction" regulations (as determined by the Commission on an individual basis). Tradeweb proposes that the Commission expand this policy of substituted compliance to include the trade execution requirements, specifically the requirement that a mandatorily cleared swap transaction generally be executed on a SEF or DCM, in certain situations, as explained below.

As the Commission notes, while it has a strong supervisory interest in any transaction which is executed with a U.S. person, the Commission is proposing a substituted compliance program in the interests of international comity where a foreign jurisdiction has a simultaneously strong supervisory interest in regulating the activities of its domiciles occurring within its territory, so as to minimize the potential for conflicts with foreign regulatory requirements. We believe that this same principle should apply to the requirement that non-U.S. entities execute mandatorily cleared swap transactions on a SEF or DCM. For example, in order for Tradeweb to continue servicing its existing foreign client base without disruption under the Proposed Guidance, it would be required to register both as a SEF and as the equivalent thereof under the forthcoming European Union regulation of OTC derivatives and under a number of other "local jurisdiction" regulatory regimes, which will likely not be finalized for at least another year.⁵

that this proposed temporary exemption would be somewhat different than the temporary exemptive relief previously proposed by the Commission. See 77 Fed. Reg. 41110 (July 12, 2012).

⁵ As noted previously, Tradeweb (and other similarly-situated U.S.-based SEFs) would, from an operational perspective, need to commit additional resources to servicing these non-U.S.-based clients, including the cost of remaining open during global business hours, if such clients were not permitted to trade on a TW MTF (or on similarly-situated multilateral trading facilities).



Mr. David A. Stawick

August 27, 2012

Page 5

Additionally, we are also concerned that local regulators in certain jurisdictions could restrict a fully registered SEF from offering services to local counterparties unless that SEF undertakes to comply with their registration procedures and remains subject to their oversight. As a result, in such jurisdictions, local clients who would be U.S. persons under the Proposed Guidance and would therefore generally be required by the Commission to execute swaps on a SEF or DCM, would be prevented from doing so if no SEFs or DCMs have completed local registration. Similarly, buy-side entities who would not be U.S. persons under the Proposed Guidance but who wish to trade with U.S.-based swap dealers could be prevented from doing so unless a SEF or DCM has been locally registered. Instead, these non-U.S. buy-side entities would effectively be required to trade with foreign swap dealers (or the non-U.S. branch of a U.S.-based swap dealer under substituted compliance, as currently proposed). Consequently, U.S.-based swap dealers could lose existing business from non-U.S. person clients.

In view of the foregoing, Tradeweb believes that it would be consistent with principles of international comity and in the interests of all market participants as well as the non-U.S. trading platforms whose provision of services and client bases stand to be disrupted, for the Commission to extend its proposed policy of substituted compliance more broadly to the requirement that swap transactions generally be executed on SEFs or DCMs. We believe that so long as the Commission determines that the "home jurisdiction" requirements for registration and operation of a SEF-equivalent entity in a foreign jurisdiction are comparable to those it has implemented in the United States, swap transactions involving non-U.S. entities should be permitted to be executed on those non-U.S. platforms.⁶

⁶ Cf. Section 5h(g) of the CEA permits the Commission to exempt, conditionally or unconditionally, a foreign SEF if the Commission finds that the facility is subject to comparable supervision and regulation by the appropriate governmental authorities in its host country. We note that the European Commission proposed an approach akin to a "substituted compliance" regime when drafting corresponding provisions under MiFIR. Specifically, the European Commission proposed requiring that derivatives transactions subject to the trading mandate occur on either an exchange/MTF/OTF registered in the EU or on a third country venue that meets the standards required of these EU-registered trading platforms. We encourage the Commission to coordinate with European regulators as they continue to revise the MiFIR text and to adopt a consistent "substituted compliance" regime across the United States and EU for these matters.



Mr. David A. Stawick

August 27, 2012

Page 6

Conclusion

Tradeweb understands that the Commission has the difficult task of balancing its own underlying regulatory concerns with principles of international comity in determining to what extent and how it intends to regulate swap transactions that occur outside of the United States. We believe that certain practical considerations related to SEFs and DCMs that we have highlighted herein favor a more flexible policy of compliance with respect to the trade execution requirements and that such flexibility will avoid the possibility of disruption to the existing global swaps market and enhance the likelihood of a smooth transition to the new regulatory framework under the Dodd-Frank Act.

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Mr. David A. Stawick

August 27, 2012

Page 7

If you have any questions concerning our comments, please feel free to contact the undersigned. Tradeweb welcomes the opportunity to discuss these issues further with the Commission and its staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "DLF", with a long horizontal flourish extending to the right.

Douglas L. Friedman

General Counsel

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner