

September 6, 2012

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

Re: **RIN 3038–AD86: Clearing Requirement Determination Under Section 2(h) of the CEA**

Dear Mr. Stawick:

Markit¹ is pleased to submit the following comments to the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) in response to its Proposed Rule regarding the Clearing Requirement Determination Under Section 2(h) of the CEA (the “**Proposed Rule**”).²

Introduction

Markit is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Our products and services are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities. As part of our index offering across various asset classes, we provide a number of indices to the fixed income markets, including Markit CDX and Markit iTRAXX, upon which tradable credit default swaps (“**Index CDS**”) are based. Index CDSs and related tranches that reference these indices are among the most liquid traded credit derivatives in the world.³

Markit has been actively and constructively engaged in the regulatory reform of the global OTC derivatives markets and the implementation of the Pittsburgh G20 commitments.⁴ Over the last 18 months we have submitted close to 30 comment letters to regulatory authorities around the world, participated in numerous roundtables and we regularly provide the relevant authorities with our insights on current market practice, for example in relation to valuation methodologies, the provision of scenario analysis, or the use of reliable and secure means to provide daily marks. We have also advised regulatory authorities on appropriate approaches to enabling a timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying regulatory requirements.

We welcome the publication of the Proposed Rule and appreciate the opportunity to provide the Commission with our comments on that rule. Our comments below are primarily directed at the Commission’s question as to whether the mandatory clearing determinations in the Proposed Rule would harm competition for those

¹ Markit is a financial information services company with over 2,700 employees in Europe, North America, and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

² Clearing Requirement Determination Under Section 2(h) of the CEA. 77 Fed. Reg. 47170 (August 7, 2012).

³ Based on information available from the Trade Information Warehouse that is maintained by the Depository Trust and Clearing Corporation (DTCC), Index CDS based on Markit indices total USD \$8 trillion notional and related tranches based on the same amount to almost USD \$2 trillion.

⁴ “Leaders’ Statement: The Pittsburgh Summit” (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

products.⁵ As described below and based on our extensive experience with the Index CDS,⁶ we do not believe that the proposed clearing determinations for the identified series and tenors of the Markit iTRAXX and Markit CDX credit indices will harm competition in the manner of concern to the Commission.

Comments

The Commission analysed the effect that the clearing determination for certain Index CDS products would have on competition (and ultimately determined that the clearing mandate would not have a negative impact on competition) and requested further comment on the extent to which competition in identified Markit CDS product markets may be impacted, including any expected impact on the price of Markit indices licenses, the cost of swaps in the required classes and entry provisions.⁷

While we do not necessarily agree with all of the characterisations of our index products described by the Commission, we do believe that, in general, the Commission correctly identified certain types of IRS and CDS as suited to the clearing requirement. In particular, we believe that the clearing mandate is achievable for those swaps that are widely used and are also already cleared safely. We do not believe that the introduction of a clearing requirement for certain Markit CDX and Markit iTRAXX Index CDS would foreclose or materially affect competition in the market for CDS products, including index licences. Our view is based on the following considerations:

- Markit, as an independent index provider, employs an open licensing policy for its various indices. Specifically, we have established licensing agreements for the Markit iTRAXX and Markit CDX indices with numerous trading and clearing venues, as well as with market makers, academics, and many other interested parties. For example, we currently licence our indices for clearing to several DCOs and we are in active discussion with several electronic trading platforms that expect to apply for registration as SEFs. We anticipate that upwards of 30 of these venues may register as SEFs and we offer to license our indices to these platforms on equivalent terms. We strongly believe that such an approach promotes liquidity and transparency, and fosters the development of high quality indices and competition in the marketplace.
- Mandating clearing for a given CDS index does not impede other index providers from creating and offering new indices. On the contrary, it may lower barriers to entry because new indices would not necessarily be subject to the clearing mandate, which can be costly (as described below). We note that it will be important for the Commission to conduct regular and frequent reviews of its clearing determinations for swaps, including Index CDS to ensure equal regulatory treatment of similar products per the CFTC's clearing requirement and avoid regulation-driven anti-competitive effects.
- As the Commission stated, a substantial percentage of transactions in each of the classes of swaps that the Commission proposed for required clearing are already cleared by one or more clearinghouses.⁸
- The Commission determined in the Proposed Rule that certain categories of swaps that are currently being cleared, including some Markit iTRAXX and CDX indices, have significant trading liquidity today.⁹ As

⁵ "Of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing or entrenching market power in an affected product or service market, or facilitating the exercise of market power." Proposed Rule, 77 Fed. Reg. at 47183.

⁶ For example, the Commission states that "the predominant provider of CDS indices is Markit" and notes that "currently no DCO clears CDS indices licensed by any other provider than Markit." *Id.* at 47184.

⁷ See *id.* at 47185.

⁸ See *id.* at 47215.

experience has shown, it is a natural development for financial products to survive in the longer term only if they manage to attract a certain level of liquidity.¹⁰ Once products have reached such level of activity, market participants choose to focus their activity on these products.

- Market participants engaging in the clearing process will face start-up and ongoing costs relating to required technology and infrastructures, legal agreements and ongoing fees to enable the clearing of their swap transactions. Given these additional end-user and index provider costs, it is not necessarily advantageous to an index provider when a relevant swap has a clearing mandate. This could have a positive effect on the competitive environment for uncleared products, and conversely a negative effect on competition in the environment for cleared products.

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Markit appreciates the opportunity to comment on the CFTC's proposed rule regarding the Clearing Requirement Determination Under Section 2(h) of the CEA. We would be happy to elaborate or further discuss any of the points addressed above. In the event that you have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Yours sincerely



Kevin Gould
President
Markit North America, Inc.

⁹ The Commission made this determination in accordance with its statutory obligation to only mandate clearing of a swap if there is “the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.” See *id.* at 47179.

¹⁰ It is worth noting that to achieve this level of activity, index providers will often incur substantial marketing and other costs.