

November 20, 2013

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

Re: Comment on trueEX Submission for a Made Available to Trade Submission for Certain Interest Rate Swaps (Submission No. 2013-14)

Dear Ms. Jurgens:

The International Swaps and Derivatives Association, Inc.¹ ("ISDA") and the Securities and Financial Markets Association ("SIFMA")² (hereinafter referred to as the "Associations") appreciate this opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") regarding the Made Available to Trade ("MAT") submission by trueEX, LLC ("trueEX") for certain Interest Rate Swaps (the "Submission Swaps") pursuant to Section 5(c) of the Commodity Exchange Act ("CEA") and Section 40.6(a) of the Commission's Regulations.³

Executive Summary

We support the contract-by-contract approach taken by trueEX with respect to the six factors set out in Section 37.10(b) (the "Six Factors") in the trueEX submission. We also believe that trueEX should demonstrate that it will meet the listing requirement in Sec. 37.10(a)(2) (the "Listing Requirement") by demonstrating how it will support trading of the Submission Swaps.

¹ ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, please visit: www.isda.org.

² SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, DC, is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

³ Letter from trueEX LLC to CFTC, Made Available to Trade ("MAT") Submission of Certain Interest Rate Swaps ("IRS") pursuant to CFTC Regulation 40.6 (trueEX LLC submission #2013-14) dated Oct. 21, 2013 (hereinafter, "trueEX Letter").

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In addition, we request that the Commission address the cross-border and packaged swap issues that will become even more important as a result of a MAT determination.

I. We support trueEX's position that the Six Factors should be addressed on a contract-by-contract basis.

The critical issue addressed by the Six Factors is trading activity and whether there is sufficient liquidity to justify a MAT determination. Classes of swaps will have a large number of potential contracts due to the many permutations of trade dates, maturities, currencies, indices, payment and reset dates and other factors. While these swaps may be of the same class or type, they do not trade against each other. As a result, in order to give a meaningful indication of trading activity with respect to any swap, the Six Factors must be applied on a contract-by-contract basis. We therefore support the contract-by-contract basis approach taken by trueEX with respect to the Six Factors.

II. trueEX must demonstrate to the Commission that it can support the trading of each contract and how it will meet the Listing Requirement.

trueEX must demonstrate how it will support trading for each Submission Swap. The listing requirement should not be satisfied because a SEF has completed the relevant certification requirements. If, as a consequence of a MAT determination, certain swaps are forced onto a SEF that has not demonstrated the practical ability to handle the necessary volumes, liquidity would be restricted, transparency would be limited and trading hampered. The market would be severely harmed if swaps were required to trade on a SEF that could not yet support trading of such swaps.

In order to show that trueEX can support trading, it must demonstrate to the Commission that it has the operational ability to arrange for the clearing on a timely basis of Submission Swaps that are being traded. This operational ability should include the capability to provide swap participants uninterrupted real-time access to its systems. SEFs are new institutions that present significant operational challenges for all market participants: these challenges include establishing basic connectivity between SEFs and their users, linkages to clearing, and arranging for pre-trade screening. These operational issues would be significantly exacerbated by a MAT determination that forces Submission Swaps to be executed on a SEF that does not have appropriate (or appropriately scaled) operational capabilities.

Our argument that the Listing Requirement includes an ability to support trading is firmly grounded in the MAT Release⁴. In the MAT Release, the Commission explained that, because of the adoption of the Listing Requirement, the Commission was removing a factor that required consideration of whether a SEF's trading platform would support trading in the swap. The MAT

⁴ Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, 78 Fed. Reg. 33613 (June 4, 2013) (hereinafter, "**MAT Release**").

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Release explained that "in light of the listing requirement, this factor is redundant."⁵ The clear implication is that the Listing Requirement will only be met if a SEF can support trading of the relevant swaps.

III. The Commission should address the extraterritorial issues that arise in connection with MAT determinations.

A. Any MAT determination must consider operational ability to support execution of contracts on a twenty-four hour basis.

Numerous parties outside the United States are, or depending on the facts may be, subject to the SEF trade execution requirement. Many of these parties and their counterparties have business days and hours that have partial, and in some case minimal, overlap with standard U.S. business days and trading hours. These parties would be unable to trade the Submission Swaps if they are subject to an effective MAT determination (and are thus Required Transactions) and trueEX is closed. For any interest rate swap subject to the trade execution requirement, there should be a requirement that at least one SEF that supports trading of such swap must be open twenty-four hours a day. Otherwise, parties subject to Dodd-Frank will not be able to trade swaps subject to a MAT Determination at times when no SEFs are open. Therefore, if a MAT determination is made for any Submission Swap, trueEX should be required to show that it or another SEF has the operational capacity to be open and to support trading of the relevant swap twenty-four hours a day.

B. Approving a MAT determination without resolving cross-border SEF issues will fragment liquidity in the relevant swap market.

A MAT determination with respect to the Submission Swaps will require all customers of U.S. Swap Dealers, including non-U.S. customers, to execute such trades on a SEF. However, many jurisdictions prohibit local customers from trading on a SEF unless that SEF is registered with and/or licensed by local regulators as an exchange or regulated trading facility. This is a potentially cumbersome and lengthy process, and considering the very recent establishment of SEFs generally, not one that SEFs applying for MAT determinations have completed. If the SEFs are not registered with foreign jurisdictions, and the MAT determination requires the Submission Swaps to be executed on a SEF, this will effectively prohibit many foreign customers from executing such swaps with U.S. Swap Dealers. In addition, many foreign trading platforms do not intend to decide whether to register with the CFTC as a SEF until the extraterritorial application of the SEF registration requirement becomes clearer. Some foreign trading platforms have already prohibited persons with a U.S. nexus from executing on such platforms.

⁵ 78 FR at 33613.

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The combination of these two factors is likely to fragment international liquidity for trading in the swaps subject to a MAT determination. Many foreign customers will not be permitted to execute on SEFs, so will not have access to the liquidity provided by U.S. Swap Dealers, while U.S. persons will effectively be shut out of foreign trading platforms that have not yet determined whether they are required to register with the Commission. A MAT determination at this time would prevent the parties from resolving the uncertainties themselves by executing transactions on a bilateral basis. The consequence is by no means trivial; the foreseeable result will be a greatly fragmented market in which Submission Swaps will only be executed on-SEF between two U.S. counterparties or off-SEF outside the U.S. between two non-U.S. counterparties. We strongly urge the Commission to consider and address the cross-border application of the SEF rules in the context of reviewing MAT submissions such as trueEX's.

IV. Packaged trades should not be subject to a MAT determination.

The trueEX submission makes it clear that packaged trades with two components in which one component is subject to a MAT determination should not be subject to the trade execution requirement. The submission observes that such packaged trades and the components of packaged trades would not have similar levels of liquidity, and more complex trades could run afoul of the commission's requirement regarding the minimum number of participants to whom a Request for Quote must be transmitted. ISDA strongly supports this view and will prepare a submission to the Commission to address this issue further.

V. Phase-In

As noted above, the Commission should consider a SEF's ability to meet the Six Factors before making a determination on which products should be included in a MAT determination. We recommend that the Commission consider a contract specific phase-in approach, where contracts are selected based on their liquidity. In such an approach, the Commission should assess the products listed in Exhibit A of trueEX's submission to determine each contract's appropriateness for initial phase-in.

VI. Conclusion

For the reasons set out above, we support the contract-by-contract approach to the Six Factors in the trueEX submission but believe that additional issues need to be addressed.

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The Associations appreciate the opportunity to comment on the trueEX submission. Please feel free to contact the undersigned at your convenience.

Ms. Melissa Jurgens
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Sincerely,



Robert Pickel
Chief Executive Officer
ISDA



Kenneth E. Bentsen, Jr.
President
SIFMA

cc: The Honorable Gary Gensler
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
The Honorable Mark P. Wetjen