



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

November 21, 2013

Christopher A. Klem
T +1 617 951 7410
F +1 617 235 0061
christopher.klem@ropesgray.com

Via Electronic Submission: <http://comments.cftc.gov>

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

Re: Request for Public Comment on Certification from trueEX, LLC to Implement Available-to-Trade Determinations for Certain Interest Rate Swaps (IF 13-005)

Dear Mr. Stawick:

We appreciate this opportunity to comment on the industry filing submitted to the Commodity Futures Trading Commission (the “Commission”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) relating to the self-certification from trueEX, LLC (“trueEX”) to implement available-to-trade determinations for certain interest rate swaps. We provide our comments from the perspective of large institutional investors on the buy-side of the market. Along with both buy- and sell-side institutions, we support the Commission’s efforts to reduce risk and promote stability and transparency in the U.S. swaps market, while also maintaining a robust market for swaps to suit the varying needs of a wide range of market participants.

We commend the Commission’s efforts to balance the Act’s goals of bringing greater pre-trade and post-trade transparency and liquidity to the swaps market with the need to maintain active buy-side participation in our markets. To that end, we are concerned that the requirement to execute swaps on a swap execution facility (“SEF”), if not managed properly, will impede, not support, these goals.

Due to the diligent efforts of the Commission, the markets for trading swaps have undergone historic changes in the past twelve months. In March, swap dealers, major swap participants and active funds became subject to mandatory clearing of certain credit default index swaps and interest rate swaps. The final phase-in of the mandatory clearing requirement for non-financial end users took effect only two months ago, in September. Around the same time, the Commission issued

temporary registration to some 18 new SEFs. Before October 2, 2013, trading facilities were not subject to SEF rules. It is our understanding from talking with clients that many buy-side market participants are still implementing the systems and operational improvements necessary to clear swaps and execute swaps on electronic platforms. Some are still going through the on-boarding process with their futures commission merchants and SEFs, and a significant number have yet to execute a single trade on any SEF platform. SEF rules and participant agreements continue to change, both in response to feedback from market participants and in response to new guidance from Commission staff on matters such as straight-through processing and impartial access to SEFs.¹ While most of these changes are welcome to the buy-side, they are slowing the onboarding process. In the face of this changing environment with a high degree of uncertainty, we are very concerned that imposing mandatory SEF execution on a broad range of transactions may leave behind a meaningful number of buy-side participants that lack the resources to implement the necessary systems changes in so short a time. While we support the Commission's goal of promoting a more transparent and liquid derivatives market, we do not believe it was Congress's intent to achieve this goal at the expense of the investors and end-users Title VII of the Act was designed to protect.

For these reasons and the reasons set forth below, we urge the Commission to phase in the SEF execution requirement gradually, starting only with the benchmark swaps. The electronic trading market has been evolving organically over time and market participants currently can elect to execute benchmark and certain other highly liquid swaps on electronic trading platforms. We are concerned that suddenly and artificially forcing market participants to execute virtually any interest rate swap (particularly non-benchmark swaps) on SEFs will have significant adverse effects on the markets, including reducing liquidity in this important segment of the swaps market. Many non-benchmark swaps are not currently traded electronically. If a swap that is not currently traded electronically receives a MAT determination, investors will be forced to choose between assuming additional new liquidity risk (that they would not previously had to face) or to pull back from the swaps market, thereby reducing overall liquidity and frustrating the investment goals of those pulling back. Mandatory trading of insufficiently liquid products on SEFs may increase participants' risk further by forcing market participants into more standardized swap terms and limiting the ability to customize swaps or, in some cases, to enter into a swap as component of a strategy or portfolio transaction (as described in more detail below).

In addition, many of the benefits of SEF execution already are available to the market. For example, a primary objective of Parts 37 and 38 of the Commission's regulations is to increase pre-trade and post-trade transparency in the swaps markets. In this regard, we respectfully note that existing trading platforms already provide significant transparency to market participants. Electronic trading platforms currently provide a wealth of information to buy-side investors, including rates, real-time

¹ See *Staff Guidance on Swaps Straight-Through Processing* (dated September 26, 2013) and *Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities* (dated November 14, 2013).

and historical pricing, and indicative data. Furthermore, we note that mandatory real-time public reporting of swap transaction and pricing data under Part 43 of the Commission's regulations provides further transparency in the swaps markets. Given that these benefits are already available, we are concerned that prematurely imposing the SEF execution requirement on non-benchmark swaps will provide minimal added benefit at a significant cost. The Commission has acknowledged the concerns of market participants regarding the consequences of imposing the trade execution requirement on illiquid swaps. The Commission stated that it "believes that the part 40 process is appropriate and well-suited to moderate this possibility and views the adopted determination factors as probative of whether an actual trading market exists."²

We believe that the truEX MAT determination responds appropriately to this general caution, because the determination is limited to the standard benchmark interest rate swaps – the standardized, plain vanilla interest rate swaps for which there are ready and willing buyers and sellers and which represent the most liquid portion of the market. As trueEX notes in its self-certification, given the variety of characteristics that can be customized in an interest rate swap (*e.g.*, currency, floating indices, payment frequency, swap tenor), there is an almost limitless number of possible unique interest rate swaps, many of which do not have ready buyers or sellers. Other self-certifications that have been submitted to the Commission would capture the standard benchmark interest rate swaps as well as many swaps that are not traded as frequently and for which there are not a sufficient number of willing buyers and sellers to justify a MAT determination. We are concerned that forcing parties to execute what is effectively an entire category of swaps on a SEF is likely to be unnecessarily disruptive to the market. We understand that under the Commission's part 40 process, an available-to-trade self-certification submitted by a SEF that is subject to a review period pursuant to 17 C.F.R. § 40.6(c) will become effective "unless the Commission . . . objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's regulations."³ We believe that broad MAT determinations that extend beyond benchmark swaps should be viewed as inconsistent with the Commission's regulations because they could decrease liquidity in the swaps markets, for the reasons described in this letter. We urge the Commission to consider interest rate swaps on a swap-by-swap basis, using actual trade data, and to deem only the most liquid, benchmark swaps as available to trade.

² *Final Rule: Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act*, 78 Fed. Reg. 33606 at 33622 (June 4, 2013) (the "Adopting Release"). Furthermore, we note the Commission's statement in the Adopting Release that it is "inherently limited by a lack of available data in attempting to quantify the costs and benefits of implementing the trade execution compliance schedule." See Adopting Release at 33620. We believe that these limitations support our request to gradually phase in the SEF execution requirement so the Commission, working together with all stakeholders, can avoid unnecessarily disrupting the markets.

³ 17 C.F.R. § 40.6(c)(3).

We also support trueEX's limitation of its available-to-trade self-certification to single standalone transactions. If the SEF execution requirement is not limited to single standalone transactions, once certain types of swaps are subject to mandatory execution on a SEF, investors would not be able to enter into certain multi-part or linked strategies or packages of swaps where at least one component of the strategy or package includes a MAT swap. It is our understanding that SEFs initially will not have the technology necessary to allow parties to execute simultaneously multi-part swaps where one or more parts are MAT swaps. For example, if an investor wishes to enter into a swap with a simultaneous hedge, it is our understanding that the investor will not be able to enter into the swap and hedge simultaneously on a SEF. This would impact common strategies such as Treasury versus swap trades and swaption versus swap trades. If investors have to separate the two trades for execution (the swap and the Treasury for example), this will increase the investor's execution risk and the costs of the transaction. As a result, these strategies will be traded less frequently and liquidity will decline in not just the swap market, but also the Treasury and swaption markets.

When executing these types of linked transactions, it is critical that the investor has the ability to execute the linked swaps simultaneously (rather than separately) to minimize execution risk and to avoid being left with, for example, an unhedged swap or a hedge position without the primary swap. Thus, once any component of a multi-part swap is MAT, market participants will be left without an important source of liquidity and risk management because they will not be able to execute such swaps as a package. We note that a comparable exception is available to allow market participants to execute certain types of futures transactions off-market in connection with exchange-for-physicals ("EFP") contracts, in which the buyer of, for example, Treasury securities transfers to the seller a corresponding amount of long futures contracts, or receives from the seller a corresponding amount of short futures, at a price difference mutually agreed upon. Pursuant to Commission regulations and contract market rules, the futures leg of the transaction may be executed off-exchange, allowing the parties to execute both legs of the transaction simultaneously. The principles underlying EFP and other similar exchange-for-futures trades also would appear to apply in the context of certain MAT swaps, *i.e.*, separate but integrally related transactions, an actual transfer of ownership of the underlying commodity or derivatives position, and both legs transacted between the same two parties. We encourage the Commission to permit a comparable exception to the SEF execution requirement by limiting the MAT determination to single standalone transactions only (as trueEX has proposed), so that market participants will continue to have the ability to execute multi-part strategies and other packages of swaps that would otherwise include a MAT swap.⁴

Similarly, we urge the Commission to exclude basket swaps from the SEF execution requirement. These customized swaps currently are not traded electronically because of their unique nature, and declaring broadly-defined categories of swaps as MAT could prohibit market participants from entering into basket swaps where a component of the basket is MAT. Again, this would deprive

⁴ We also note that while a single component of a linked transaction may be liquid, the entire linked transaction, when viewed as a whole, most likely is illiquid and should not be considered available to trade.

market participants of a significant source of liquidity and risk management. As we understand the trueEX MAT determination, it would not include any basket swaps.

We appreciate the Commission's attention to these comments.

Sincerely yours,

/s/ Christopher A. Klem
Christopher A. Klem

/s/ Leigh R. Fraser
Leigh R. Fraser

/s/ Molly Moore
Molly Moore