

November 27, 2013

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

Re: Comment on TW SEF LLC – Self-Certification for Swaps Made Available to Trade

Dear Ms. Jurgens:

The International Swaps and Derivatives Association¹ ("**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 TW SEF LLC ("**Tradeweb**") for certain 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 Tradeweb with respect to the six factors set out in Section 37.10(b) (the "**Six Factors**") in the Tradeweb submission. We also support Tradeweb's approach to showing how it meets the listing requirement in Sec. 37.10(a)(2) (the "**Listing Requirement**") by demonstrating how it supports the trading of the Submission Swaps. 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.

¹ ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985 and today has over 800 member institutions from 54 countries on six continents. Our members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end-users that rely on over-the-counter derivatives to manage efficiently the risks inherent in their core economic activities. 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 TW SEF LLC, TW SEF LLC Self-Certification for Swaps to be Made Available to Trade dated Oct. 28, 2013 (hereinafter, "**Tradeweb Letter**").

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I. We support Tradeweb'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 Tradeweb with respect to the Six Factors.

II. We support Tradeweb's approach in demonstrating how it can support the trading of each contract and meet the Listing Requirement.

The Listing Requirement should not be satisfied because a SEF has completed the relevant certification requirements. In order to show that it can support trading, a SEF 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.⁴ This operational ability should include the capability to provide swap participants uninterrupted real-time access to its systems. Therefore, we support Tradeweb's decision to include in its letter an analysis of the trading of Submission Swaps on Tradeweb. For example, the Tradeweb Letter notes that in 2013 "the average daily notional trading volume for interest rate swaps ("**IRS**") has equaled approximately \$5 billion" and the IRS Submission Swaps represent 87% of the trading volume on Tradeweb's IRS platforms and approximately 78% of the total Swap Data Repository volume for Dollar, Euro and Sterling fixed floating IRS volume.⁵ In addition, the Tradeweb Letter provides that for credit default Submission Swaps, the average daily trading volume for the preceding month in the OTR (IG 21) CDX index was approximately \$9.7 million and the average daily trading volume for all OFTR CDX indices was \$9.2 million.⁶ Demonstrating the capability to support the trading of Submission Swaps should be a crucial consideration for the Commission's review of MAT Determinations. Therefore, we support Tradeweb's approach in demonstrating how it does so by providing the information and data provided in the Tradeweb Letter.

III. Tradeweb should clarify how its MAT determination will apply to "on-the-run" index credit default swaps.

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).

⁵ Tradeweb Letter at 9.

⁶ Id. at 7.

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The Tradeweb Letter applies a MAT determination to credit default swaps ("CDS") on the CDX and iTraxx indices. The Tradeweb Letter provides that the series of each such index that would be subject to the MAT Determination is the "current OTR Series and the then next Series that will replace the current one, on a rolling basis"⁷. It is not clear to us whether this means that an "on-the-run" series would be subject to the MAT determination only as long as it is "on-the-run", or whether a series could be considered MAT even after it has gone "off the run". We note that market liquidity for index CDS is very highly concentrated in "on the run" series, and liquidity for "off the run" series is limited.

IV. 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 Tradeweb 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, Tradeweb 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

⁷ Tradeweb Letter, at 3.

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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.

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 Tradeweb's.

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

Packaged trades that have two components, one of which is subject to a MAT determination, should not be subject to the trade execution requirement. 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 will prepare a submission to the Commission to address this issue further.

VI. 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 Tradeweb's submission to determine each contract's appropriateness for initial phase-in.

VII. Conclusion

For the reasons set out above, we support the contract-by-contract approach to the Six Factors and the approach taken by Tradeweb in showing whether it can support the trading of Submission Swaps in the Tradeweb Letter but believe that additional issues need to be addressed.

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

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