

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

**Re: Comment on MarketAxess Made Available to Trade Submission of Certain Credit Default Swaps**

Dear Ms. Jurgens:

The International Swaps and Derivatives Association<sup>1</sup> ("**ISDA**") and the Securities and Financial Markets Association ("**SIFMA**")<sup>2</sup> (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 MarketAxess SEF Corporation ("**MarketAxess**") for certain Credit Default 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.<sup>3</sup>

**Executive Summary**

We support the contract-by-contract approach taken by MarketAxess with respect to the six factors set out in Section 37.10(b) (the "**Six Factors**") in the MarketAxess submission. We also support MarketAxess'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.

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<sup>1</sup> 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](http://www.isda.org).

<sup>2</sup> 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](http://www.sifma.org).

<sup>3</sup> Letter from MarketAxess SEF Corporation to CFTC, Made Available to Trade Submission of Certain Credit Default Swaps pursuant to CFTC Regulation 40.6 dated Oct. 30, 2013 (hereinafter, "**MarketAxess Letter**").

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**I. We support MarketAxess'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 MarketAxess with respect to the Six Factors.

**II. We support MarketAxess'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 execution on a timely basis of Submission Swaps that are being traded.<sup>4</sup> This operational ability should include the capability to provide swap participants uninterrupted real-time access to its systems. Therefore, we support MarketAxess's decision to include in its letter an analysis of the trading of Submission Swaps on MarketAxess. For example, the MarketAxess Letter states that it has offered each Submission Swap on a fully electronic trading platform from 2007 to October 2013 with nine dealers generally available to receive and respond to requests for quotes.<sup>5</sup> In addition, the MarketAxess Letter notes that as of October 30, 2013, six swap dealers were streaming indicative bids and offers on Submission Swaps on the MarketAxess SEF.<sup>6</sup> 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 MarketAxess's approach in describing the trading activity on MarketAxess.

**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.**

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<sup>4</sup> Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, 78 Fed. Reg. 33613 (June 4, 2013).

<sup>5</sup> MarketAxess Letter at 2.

<sup>6</sup> Id.

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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 all SEFs that list the Submission Swaps are closed. For any credit default 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, MarketAxess 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.

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 MarketAxess's submission.

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**IV. 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.

**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 MarketAxess's submission to determine each contract's appropriateness for initial phase-in.

**V. Conclusion**

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

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

Sincerely,



Robert Pickel  
Chief Executive Officer  
ISDA



Kenneth E. Bentsen, Jr.  
President  
SIFMA

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