



Carl B. Wilkerson
Vice President & Chief Counsel, Securities & Litigation
(202) 624-2118 t (866) 953-4096 f
carlwilkerson@acli.com

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Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

By Electronic Submission

RE: Industry Filings: IF 13-004¹, IF 13-005², IF 13-007³, and IF 13-008⁴
Certifications to Implement Available-to-Trade Determinations for Certain Interest Rates Swaps from each of Javelin SEF, trueEX, TW SEF, and MarketAxess.

Dear Ms. Jurgens:

The American Council of Life Insurers (“ACLI”) is a national trade association with 300 members that represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. ACLI has actively offered constructive input on numerous rules implementing Title VII of the Dodd-Frank Wall Street Reforms and Consumer Protection Act (“Dodd-Frank Act”). ACLI appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the “CFTC”) on the certifications from each of Javelin SEF, trueEX, TW SEF, and MarketAxess to implement Made Available-to-Trade (“MAT”) determinations for certain Interest Rate Swaps (“IRS”).

I. Overview of the MAT Interest Rate Swap Filings

Javelin SEF, trueEx, TW SEF, and MarketAxess have each submitted MAT filings pursuant to Rule 40.5 related to IRS. The CFTC’s approval of each of these filings is important, because under the Commodity Exchange Act (“CEA”), MAT determinations require products to be traded on or subject to the rules of a SEF or DCM, and under Part 39 of the CFTC’s regulations, will be treated as “Required Transactions” unless otherwise exempt.

¹ <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/javelinsefsubmat1306r.pdf>

² <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/trueexsub201314mat.pdf>

³ <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/corpg5twmatdeter101813.pdf>

⁴ <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/marketaxessmatsub103013.pdf>

Life insurers prudently manage asset and liability risks associated with their interest rate swaps.⁵ Members of ACLI have actively traded swaps on electronic trading platforms and look forward to migrating to trading swaps on CFTC-registered swap execution facilities (“SEFs”) in the future. However, it is important that the CFTC oversee the methodical implementation of electronic swap trading on CFTC-registered SEFs.

II. Statement of Position

We have reviewed the four MAT filings from Javelin SEF, trueEx, TW SEF, and MarketAxess in comparison to the CEA and the CFTC’s regulations. We urge the CFTC to coordinate a thorough review of each MAT determination filing before approving any of the aforementioned filings and to only approve an initial MAT determination filing once the market is operationally ready for a SEF trading. The CFTC should not approve any MAT determinations until each of the provisionally registered SEFs’ Rulebooks conform to the CFTC’s requirements. We also encourage the CFTC to phase implementation of the MAT determinations focusing first on the most liquid products – the IRS benchmark tenors -- and then to consistently employ market data and an analysis of the underlying market forces and implications with respect to any expansion of the MAT determinations in the future.

A. MAT Determination Filings

In our review of the four aforementioned filings, we found the Javelin SEF filing did not provide enough supportive data to prove that the extensive list of instruments for initial MAT determination should be approved by the CFTC pursuant to regulation 37.10. The filing does not demonstrate that Javelin SEF can support trading of all of the contracts within its MAT determination and therefore fails to meet the “listing requirement” of CFTC regulation 37.10(a)(2). The filing also fails to address the relevant factors for a MAT determination for “all” of the swaps in the MAT determination as required under CFTC regulation 37.10(b).

In comparison, the trueEx, TW SEF, and MarketAxess MAT determination filings both focused on benchmark tenor IRS that have demonstrated liquidity and standing market participants in the electronic trading environment.

B. Approving MAT Determinations

Before the CFTC approves MAT determinations filings, the CFTC should thoroughly test the data provided in the SEF filing, and if the data cannot be supported, then the MAT filing should not be approved. We support the letters submitted by the Financial Services Roundtable and The Asset Management Group of the Securities Industry and Financial Markets Association with respect to the responsibilities of the CFTC per Section 723(a)(3) of the Dodd-Frank Act added section 2(h)(8) of the Commodity Exchange Act and the Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and

⁵ Life insurers’ financial products protect millions of individuals, families, and businesses through guaranteed lifetime income, life insurance, long-term care insurance, and disability income insurance, among other products. These products provide consumers with financial security through various stages of life and enable them to plan for their financial future, including retirement. Many life insurer obligations to policyholders as well as the assets that are purchased to support those liabilities have durations that extend for one or more decades. Life insurers, therefore, carefully manage risks associated with long term assets and liabilities with derivatives, including interest rate swaps. The regulatory implementation of changes to the trading operations of interest rate swaps is critically important to the life insurance industry.

Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. (June 4, 2013).

C. SEF Rulebooks

We are concerned with the inconsistencies among the SEFs’ Rulebooks in comparison to the CFTC’s SEF core principles and other applicable requirements of the CEA and the CFTC, similar to the concerns raised by the Financial Services Roundtable in their comment letter dated November 21, 2013.⁶ The thorough review of each SEF’s Rulebook by the CFTC is a critical step before the CFTC approves any MAT determinations.

The CFTC has identified inconsistencies between the CEA and CFTC Rules. Examples include:

- The Division of Market Oversight’s (“DMO”) guidance issued on September 30, 2013⁷ stated that *“It has come to the Division’s attention that some SEF rule books contain provisions which appear to be inconsistent with the Commission’s regulations. Specifically, this Guidance addresses: (1) the definition of “member” in the swap execution facility final rulemaking (the “SEF Final Rulemaking”),⁸ (2) the exception to the aggregation prohibition in order to satisfy the minimum block trade size or cap size requirement in Commission regulation 43.6(h)(6),⁹ (3) the liquidation or transfer of open positions in any contract and the imposition of margin requirements in emergency situations under Commission regulation 37.801,¹⁰ (4) the reporting of block trade data to swap data repositories (“SDRs”) under Commission regulation 43.6(g),¹¹ and (5) the time delay requirement under Commission regulation 37.9(b).^{12”}*
- The Division of Clearing and Risk, DMO, and Division of Swap Dealer and Intermediary Oversight issued guidance issued on November 14, 2013 on Rulebook practices that are inconsistent with the impartial access requirement set forth in the Commodity Exchange Act (“CEA”) and CFTC regulation 37.202.¹³ Specifically, the CFTC noted that some SEFs Rulebooks restricted access to specific market participants. In addition, that guidance also clarified the inconsistencies of some SEF participation agreements and Rulebooks with Regulation 37.7.

Although we appreciate the CFTC’s guidance, our members continue to find issues of concern within the Rulebooks compared to the relevant regulations, many of which are contrary to public

⁶ <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59376&SearchText>

⁷ See Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities (Sep. 30, 2013.)

⁸ Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (Jun. 4, 2013).

⁹ Commission regulation 43.6(h)(6).

¹⁰ Commission regulation 37.801 and the applicable guidance in Appendix B to part 37.

¹¹ Commission regulation 43.6(g).

¹² Commission regulation 37.9(b).

¹³ See 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 (Nov. 14, 2013)

policy. As a result, many of our members are reluctant to finalize relationships with and implement SEF trading while the SEF framework remains in such a state of flux.

Because inconsistencies between some SEF Rulebooks and the CFTC’s Core Principles have been identified and guidance has been issued, the MAT determinations should not be implemented until the CFTC has (i) received a certification from each SEF that its Rulebook and agreement are consistent in all respects with the CEA and CFTC guidance related thereto, and (ii) completed a thorough review of each SEF Rulebook to confirm the accuracy of such statement.

D. Operational Readiness

Although many of our members have been planning for SEF implementation for many months, we recognize that representatives from all parties to a SEF transaction have experienced uncertainties with respect to operational readiness. In addition, the various parties to a SEF trade are experiencing challenges connecting to one another prior to the expected mid-February MAT compliance date.

For example, with a SEF executed trade, the following market participants must all be aligned: SEF, Futures Commissions Merchant (“FCM”), life insurance company as a liquidity taker, credit hub, and liquidity provider. Although the final SEF rules were published in the spring of 2013, it was not until later this summer that market participants were provided first editions of agreements and Rulebooks. Since then, these documents continue to evolve in response to market input and the CFTC’s guidance.

E. Product-type Phased Implementation

ACLI suggests that the CFTC phase-in implementation of MAT determinations by product type, focusing first on benchmark tenors for IRS. Any additional MAT determinations should be supported by ample, thoroughly vetted data on the ability of the SEFs and the market participants to implement such a determination and the resulting benefits to the public integrity of the markets.

F. Benchmark Tenors

The benchmark tenors (i.e., the 1Y, 2Y, 3Y, 5Y, 7Y, 10Y, 15Y, 20Y, and 30Y tenors) in the USD and EUR fixed-to-floating swap class¹⁴ are the logical place to begin a phased implementation of the MAT determinations. They are the most liquid and consistently traded instruments, the standard measures of market prices, and the primary risk transfer instruments within their respective markets.

SEFs are prepared to offer both order book and Request for Quote (“RFQ”) trading protocols for the benchmark tenors, but we do not believe that SEFs have liquidity providers ready to provide bids in the non-benchmark tenors within an order book due to lack of executed SEF documentation and technology integration. And although RFQ protocols could presumably accommodate free text fields that would allow a requester to define bespoke terms, this does not support a technology-driven, efficient workflow. Based on recently reported data, a majority of the SEF trading since the beginning of November 2013 has been within benchmark tenors.¹⁵

¹⁴ Including both Par Coupon and MAC swaps

¹⁵ CLARUS Financial Technology as of November 21, 2013. SDR data sourced from DTCC Real-Time Dissemination

We encourage the CFTC to implement a phased approach, similar to the clearing mandate earlier this year. That schedule allowed market participants to test the workflow and data requirements without causing market disruptions. In addition to the phased implementation by market participant, the clearing mandate was also accompanied with mechanisms to work through initial operational issues via the Cleared Derivatives Execution Agreement and Part 23 rules. The CFTC's Straight-Through Processing guidance on September 26, 2013 followed by No-Action Relief published on October 25, 2013 outlines details when a trade is not accepted for clearing due to operational issues, however, our members have experienced operational issues that are not rectified within 30 minutes of execution and therefore this guidance and No-Action Relief is troubling with such little time to thoroughly test all workflows before mid-February.

Recommended Solution

In view of the MAT filings submitted and the lack of SEF trading operational readiness throughout the market, we encourage the CFTC to coordinate a thorough review of each MAT determination filing before approving any of the aforementioned filings. Before the CFTC approves a MAT determination filing that would require the bulk of the swap market to execute on SEF, it should assure itself and the market that the SEFs, the CFTC and the rest of the market participants are sufficiently comfortable with the SEF structure (including rulebooks and agreements) and the complicated operational nuances of SEF trading. Toward that end, the CFTC should adopt a phased implementation of the MAT determinations focusing first on IRS benchmark tenors using data-driven approaches to expand the MAT determinations.

We urge the CFTC (i) to adopt a phased implementation of the MAT determinations focusing its first determination on IRS with benchmark tenors, and (ii) to provide the buy-side community 120 days after any such determination to appropriately implement and test the appropriate connections with competitive and thoroughly vetted SEFs offering such products. Phased implementation will allow the market to take a measured approach to the SEF electronic trading protocols.

We greatly appreciate your attention to our views. If any questions develop, please let me know.

Sincerely,



Carl B. Wilkerson