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December 3, 2013

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

Re: Certification of Designated Contract Market and Swap Execution Facility Available-to-Trade Determinations for Interest Rate and Credit Default Swaps

Dear Ms. Jurgens:

BlackRock¹ appreciates the opportunity to comment with respect to the certification of the “made-available-to-trade” (“MAT”) determinations with respect to certain interest rate swaps (“IRS”) and credit default swaps (“CDS”) submitted to the Commission by each of Javelin SEF, LLC trueEX, LLC, TW SEF LLC and MarketAxess SEF Corporation.

BlackRock has consistently supported central clearing to protect market participants and to reduce systemic risk. We have successfully transitioned the vast majority of our clients subject to the mandate to central clearing. We are also very committed to electronic trading and have focused significant time and resources working through market infrastructure issues. We applaud the Commission’s vision for electronic trading of swaps and share its desire for a successful transition to mandatory swap trading on swap execution facilities (“SEFs”) and designated contract markets (“DCMs”). As we have noted in prior comment letters², it is important that Commission regulations, the rules of SEFs and DCMs, and market mechanisms in general be designed to maintain and enhance the liquidity that currently exists for IRS and CDS in the OTC market. This principle is particularly important as the Commission considers these MAT determinations, as once just one MAT determination is effective, the ability of market participants to trade bilaterally will be eliminated for that particular set of contracts.

We agree with other commentators that some of the MAT determinations have procedural and substantive flaws³, and support those commentators that suggest the Commission use a phase-in approach⁴. We believe the phase-in should be based primarily on the type of market participant (as was the successful phase-in of the clearing mandate) with dealers in the first wave and other market participants following later and secondarily on the particular contract or class of contracts. This will allow the most sophisticated and prepared market participants and most liquid contracts to lead into the SEF mandate.

¹ BlackRock is one of the world’s leading asset management firms, managing approximately \$4.01 trillion (as of 30 September 2013) on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurance companies and other financial institutions, as well as individuals around the world. BlackRock pays due regards of its clients’ interests and it is from this perspective that we engage on all matters of public policy. BlackRock supports regulatory reform globally where it increases transparency, protects investors, facilitates responsible growth of capital markets and, based on thorough cost-benefit analyses, preserves consumer choice.

² See, e.g., BlackRock letter dated March 20, 2011 on CFTC Proposal on Core Principles for Swaps Execution Facilities, available at <http://www.blackrock.com/corporate/en-us/literature/whitepaper/core-principles-for-sefs-letter-cftc.pdf>

³ SIFMA-AMG letter to CFTC dated December 2, 2013 re: Industry Filing 13-06

⁴ See, Financial Services Roundtable letter dated November 21, 2013, available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59375&SearchText>

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In its rulemaking on the MAT determination, the Commission correctly focused on the issue of liquidity as the guiding principle for MAT determinations, and required each SEF or DCM to address various factors concerning liquidity as part of their determinations. In addition, in the final rule on MAT determinations, the Commission added a “listing requirement” and eliminated the previously proposed criteria that the SEF/DCM demonstrate that its trading system or platform supports trading in the swap. The MAT rulemaking explained that this factor was eliminated because it was as included in (or “redundant” with) the “listing requirement” in the final rules. We take this to mean that a SEF/DCM must demonstrate as part of its MAT determination that in fact its facility or platform does support trading of the swap.

In addition to the requirement that a swap must be listed by the requesting SEF in order to be eligible to be submitted for a MAT determination, once a swap is subject to a MAT determination and therefore a Required Transaction, Commission regulation 37.9(a) (2) (ii) requires that SEFs offering the swap must use an “Order Book” for execution, either on a stand-alone basis or in conjunction with a “Request for Quote” system. Therefore, once a swap is subject to a MAT requirement, a SEF must have an Order Book established for the swap; merely listing the swap on an RFQ system would not appear to satisfy the requirement of Regulation 37.9(a)(2)(ii). It would be highly imprudent, therefore, for the Commission to allow a MAT determination to occur unless the requesting SEF can show it has established an Order Book for *each* swap subject to the determination. Without an Order Book being in place for every swap subject to the MAT determination prior to such swaps becoming Required Transactions, the Commission would risk effectively banning trading in such swaps altogether, at least until such Order Books could be established.

While there are a number of ways that a SEF or DCM may demonstrate that liquidity exists and that the facility is capable of supporting trading for those swaps for which they are making a MAT determination⁵, we believe that the Commission should consider the MAT determinations against the following objective criteria:

- At least two executing brokers who are connected to the SEF/DCM and who have agreed to quote two-way markets in each MAT swap
- At least four FCMS connected to the SEF/DCM who have agreed, or who have stated their willingness to agree, to take on trades executed on the SEF/DCM
- In order to ensure connectivity at all times, at least two routing mechanisms/middleware providers up and running with connectivity between the SEF/DCM (only one of which can be the SEF/DCM proprietary mechanism)
- Any MAT swap needs to be able to be expressed on a central limit order book (“CLOB”), that is, available on the SEF requesting the MAT

We also believe the rulebook for a SEF requesting a MAT determination should be fully vetted by the Commission to ensure compliance with the CEA and Commission rules and guidance before allowing a MAT designation to occur, even if the SEF has certified its compliance under CFTC Rule 40.2 in its listing submission.

⁵ Rule 37.10(b) sets out six factors for MAT determinations: (1) whether there are ready and willing buyers and sellers; (2) frequency or size of transactions; (3) trading volume; (4) number and types of market participants; (5) bid/ask spread; or (6) usual number of resting firm or indicative bids and offers.

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In order for the Dodd-Frank Act objectives for SEF/DCM trading of increased transparency and improved price efficiencies to be met, it is very important that the Commission be confident that each MAT determination meets the criteria it has set out in its rules, and that the implementation of the trade execution requirement be successful from the very beginning. The industry is working hard to develop new systems and trade flows, to establish connectivity with a large number of SEFs, and agreeing necessary documentation, but many challenges remain, even for BlackRock. The challenges are heightened when being required to potentially transact on a SEF that has no known track record, limited capital and whose rules shift virtually all potential liabilities, costs and risks to end users. Policy should drive creation of strong and viable trading venues which begins with their ability to robustly support the products that they MAT. Making a MAT determination on the basis that one or more other SEFs/DCMs would also support the MAT swaps would be a tightrope walk without a safety net, given a MAT swap for which no viable SEF exists could not be traded at all. It would be unfortunate that this key milestone in regulatory reform were to have a significantly flawed launch, when the Commission has the ability to assure the transition to the trade execution requirement, through phase-in and otherwise, goes smoothly.

We look forward to a continued dialogue on this topic, and if you have any questions please contact the undersigned.

Sincerely,

Richie Prager
Supurna VedBrat
Rick Ostrander