



TW SEF LLC
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December 6, 2013

By electronic submission

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comment Regarding Industry Filing IF 13-009; Request from CME Group to Amend Rule 538 (Exchange for Related Positions)

Dear Ms. Jurgens:

TW SEF LLC (“TW SEF”) submits this letter to the Commodity Futures Trading Commission (the “Commission”) on behalf of itself and its affiliate, DW SEF LLC (“DW SEF”), in response to The Chicago Mercantile Exchange Inc. (“CME”) Industry Filing IF 13-009 (the “Proposal”), which requests approval from the Commission of an amendment to existing Rule 538 of the Chicago Mercantile Exchange Inc., the Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., Commodity Exchange, Inc., and the Board of Trade of Kansas City, Missouri, Inc. (collectively, the “Exchanges”). The Proposal is intended principally to eliminate the use of “transitory” Exchange for Related Positions (“EFRP”) transactions. However, apart from this objective, the Proposal also would, among other “clarifications,” prohibit a swap traded on or subject to the rules of a designated contract market (“DCM”) or a swap execution facility (“SEF”) to be used as the related position component of an EFRP transaction conducted pursuant to the rules of the Exchanges (the “Competitive EFRP Prohibition”).¹

As discussed in more detail below, we believe that the proposed Competitive EFRP Prohibition would reduce competition and transparency in a manner wholly inconsistent with the

¹ This prohibition is contained as part of the response to the third FAQ included in the Exchanges’ proposed Market Regulation Advisory Notice RA1311-5.

Commodity Exchange Act (the “Act”) and Commission Regulations thereunder. Accordingly, we urge the Commission to reject this aspect of the Proposal.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) promotes financial stability by improving accountability and transparency in the financial system and protecting market participants from abusive and anticompetitive business practices. The Commission, consistent with its obligations under the Act, as amended by Dodd-Frank, has implemented rules providing for registration and regulation of SEFs and the mandatory trading of specified swap contracts on SEFs and DCMs. These rules are intended facilitate a transition of swaps trading from a traditionally opaque OTC market to one that is open and competitive. TW SEF is directly involved in the swaps market as a SEF registered with the Commission, recognizes the importance of these goals and supports the Commission’s implementation of them.

We believe that the objectives to be served by Dodd-Frank’s SEF regime are relevant not only in the market for “outright” swaps, but also for swaps negotiated as the related position component of an EFRP. In particular, one common type of EFRP is an exchange of an interest rate swap position for a bundle of Eurodollar futures positions. By offering market participants the ability to execute such an EFRP as a single package,² a SEF can bring the benefits of the SEF trading environment – most notably increased price transparency and competition – to the EFRP market, enhancing its efficiency relative to a bilateral market. Thus, while we do not believe that it is appropriate at this time to *require* the interest rate swap leg of such a transaction to be executed on a SEF or a DCM,³ in our view it would not be appropriate to entirely *foreclose* the execution of the swap leg of an EFRP on a SEF, as proposed by the Exchanges.

Discussion

Consequences of the Competitive EFRP Prohibition

Significant adverse consequences would result from the Competitive EFRP Prohibition envisioned by the Proposal. If the swap leg of an EFRP was subject to the Act’s mandatory trading requirement, market participants unable to qualify for an exemption or exception from that requirement would be excluded completely from EFRP transactions involving such swaps, whether they wished to execute them on a SEF or DCM itself or as bi-laterally negotiated block-size trades executed subject to the rules of a SEF or DCM. Such participants would instead be forced to enter into separate outright swap and futures transactions, forcing them to assume the

² We note that, while such a SEF would be facilitating the execution of the futures leg of an EFRP as well as the transaction’s swap leg, if the SEF is not operating as a “trading facility” as defined in section 1a(51) of the Act it would not separately be required to register as a DCM. The futures transaction itself would, in turn, satisfy the exchange-trading requirement in section 4(a) of the Act when it is submitted pursuant to DCM rules as part of an EFRP.

³ On November 29, 2013, TW SEF and DW SEF filed an amended made available to trade determination that, among other modifications, clarified that “packaged trades,” including EFRPs, were not included within their determination. As expressed in the amended determination, there are currently some notable operational issues associated with requiring packaged trades to be executed on a SEF or DCM.

“legging risk” arising from market moves in between the time that a swap position is executed and offsetting futures positions can be executed, or vice versa. Even for EFRPs not involving swaps subject to mandatory trading, the Competitive EFRP Prohibition would effectively force parties to an EFRP to transact bilaterally and with less access to price competition and transparency. On the other hand, the Competitive EFRP Prohibition is not likely to increase centralized trading on DCMs because trading outright swaps and futures instead of EFRPs would expose parties to legging risk, as noted above. Rather, the end results would likely be an increase in OTC trading and decrease in transparency – results completely contrary to the objectives of Dodd-Frank and the Act.

We also note that, while the Proposal would only apply the Competitive EFRP Prohibition to an EFRP involving a swap executed on a SEF or DCM, we are concerned that this prohibition would set an unfortunate precedent for other types of EFRPs, such as those involving Treasury bonds and other cash market instruments. In particular, an interpretation of Rule 538 that would preclude the cash leg of an EFRP from being executed on an alternative trading system registered with the Securities and Exchange Commission would likewise result in a reduction in liquidity, transparency and competition not consistent with the Act.

The foregoing consequences are avoidable and unnecessary. The additional costs and burdens imposed by the Competitive EFRP Prohibition are wholly unrelated to the central purpose of the Proposal, which is to eliminate the use of “transitory” EFRP transactions. Ultimately, the Competitive EFRP Prohibition, in addition to being inconsistent with the spirit and purpose of the CEA and Commission Regulations, has no discernible regulatory justification and does not advance any legitimate objective.

Analysis under Part 40

The Exchanges submitted the Proposal to the Commission for its approval pursuant to Commission Regulations § 40.5. Under Regulations § 40.5(b), the Commission may not approve the Proposal if it is inconsistent with the Act or the Commission’s Regulations. Based on the considerations described above, the Commission should not approve the Proposal’s Competitive EFRP Prohibition because it is inconsistent with the following provisions of the Act and Commission Regulations thereunder:

- Section 5h(e) of the Act instructs the Commission “to promote the trading of swaps on [SEFs] and to promote pre-trade price transparency in the swaps market.” The Competitive EFRP Prohibition would have the opposite effect, discouraging the trading of swaps on SEFs and diminishing pre-trade price transparency in the swaps market.
- Section 7(d)(19) of the Act (DCM Core Principle 19) prohibits DCMs from adopting “any rule or taking any action that results in any unreasonable restraint of trade” and from imposing “any material anticompetitive burden on trading on the contract market.”⁴ By prohibiting the swap leg of an EFRP from being executed competitively on a SEF or a DCM, the Competitive EFRP Prohibition

⁴ See, also Commission Regulations 38.1000(b).

Ms. Melissa Jurgens

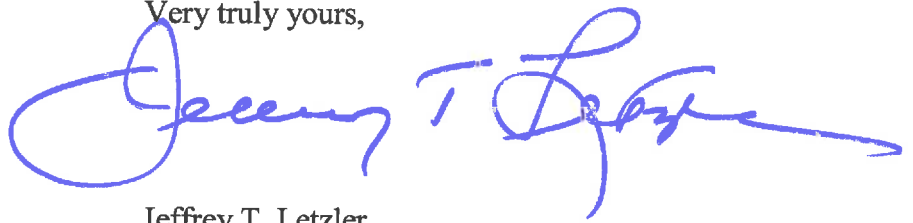
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would impose an anticompetitive burden on the trading of EFRPs. The Competitive EFRP Prohibition would also unreasonably restrain the ability of TW SEF, DW SEF and other SEF operators to offer alternative means for the execution of EFRPs.

We appreciate the opportunity to provide comment on the Proposal and we thank you for your consideration of our comments.

In the event that you have questions, please call me at (646) 430-6228 or send an email to Jeffrey.Letzler@tradeweb.com.

Very truly yours,



Jeffrey T. Letzler
Chief Compliance Officer

cc: The Honorable Gary Gensler, Chairman
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