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December 4, 2013

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

Re: Response to the Financial Services Roundtable comments on trueEX Submission for a Made Available to Trade (Submission No. 2013-14)

Dear Ms. Jurgens:

trueEX LLC (“**trueEX**”)¹ operates as both a fully designated contract market (“**DCM**”) and temporarily registered swap execution facility (“**SEF**”). trueEX currently lists the most liquid, plain vanilla interest rate swaps for trading on its DCM order book and offers trading in more custom interest rate swaps and certain portfolio services on its SEF. trueEX provides a safe, efficient and streamline interest rate swap trading platform for a diverse set of market participants.

On October 21, 2013, self-certified with the U.S. Commodity Futures Trading Commission (the “**CFTC**” or “**Commission**”) Submission No. 2013-14 (the “**MAT Determination**”) under Commission regulation § 40.6. The MAT Determination set forth trueEX’s determination that certain interest rate swaps (“**MAT Contracts**”) are made available to trade pursuant to Commission regulations §§ 37.10 and 38.12. The Commission stayed the MAT Determination and invited public comment. The public comment period for the MAT Determination closed on November 21, 2013. CFTC Division of Market Oversight (“**DMO**”) has since granted trueEX the opportunity to respond to public comment.

On November 21, 2013, the Financial Services Roundtable (the “**FSR**”) submitted to the Commission a comment letter (the “**Comment Letter**”) addressing determinations by three temporarily registered swap execution facilities (the “**Other SEFs**”) and trueEX (the Other SEFs and trueEX collectively, the “**Execution Venues**”) that certain swaps are available to trade. Specifically, the Comment Letter addressed: (i) SEF operational testing and order book functionality verification by Commission; (ii) perceived inconsistencies between SEF rulebooks and Commission regulations; and (iii) the adequacy of data presented to support the analysis of the regulatory factors examined in certain available to trade determinations. trueEX appreciates the FSR’s comments and takes this opportunity to address some of the content of the Comment Letter.

¹ The Commission granted trueEX temporary registration as a swap execution facility on September 20, 2013.

A. Operational Testing and Functionality Verification

I. As part of trueEX's DCM application, the Commission has previously tested trueEX infrastructure and processes, confirmed all necessary connections are in place, and verified that MAT Contracts can be executed on its order book.

The FSR believes that the Commission should refuse to certify or approve the MAT Determination unless and until the Commission has: (i) thoroughly tested the new infrastructure and processes established by trueEX; (ii) concluded that all necessary connections between various market participants have been established; and (iii) verified that trueEX is capable of executing MAT Contracts on its order book.² As described below in Section A. II of this letter, trueEX does not believe that consideration of any of the foregoing conditions is consistent with or required under the Commission regulations §§ 38.12 and 37.10; however, trueEX agrees that it is important for a SEF or designated contract market (“DCM”) that list MAT Contracts to establish adequate connectivity and functionality for trading such contracts.

trueEX infrastructure, processes, connections and functionalities have been extensively reviewed and tested by the Commission as part of trueEX's application to be a DCM pursuant to § 5(b) of the Commodity Exchange Act (“CEA”) and Part 38 of the Commission regulations. On January 31, 2012, trueEX submitted its DCM application enclosing 23 exhibits, including a document describing trueEX's compliance with the CEA and each of the 23 Core Principles of Part 38. The DCM application provided the Commission with robust descriptions of system processes and connections, including trueEX's connection to the DTCC swap data repository, the process for swap data reporting pursuant to Parts 43 and 45 of the Commission's regulations, trueEX's connection with CME's derivatives clearing organization (“DCO”), trade processing workflow and order book operations.

Over the months that followed filing of the DCM application, trueEX established a channel of ongoing communication with numerous CFTC staff members and provided timely responses to no fewer than 24 separate Commission requests for additional detail. trueEX staff coordinated closely with the Commission to revise and refine the trueEX compliance manual, operating procedures and rulebook. trueEX conducted multiple demonstrations of its trading functionality for the Commission and hosted the Commission at trueEX corporate offices in New York on multiple occasions. Visits by the Commission included a comprehensive two-day, on-site trueEX technology review in April 2012 and, separately, a tour of the off-site trueEX disaster recovery facilities. On September 25, 2012, a Commission Order designated trueEX as a contract market.³

trueEX has since established additional legal relationships and operational connectivity with numerous sell-side, buy-side and clearing firm market participants and the DCO, LCH, as well as multiple liquidity providers that currently stream executable, firm bids and offers on MAT Contracts on the trueEX DCM order book.⁴ Our customers and their clearing firms may access

² See generally, Comment Letter at pg. 6.

³ See generally, In re Matter of the Request of trueEX LLC for Designation as a Contract Market Under Section 5 of the Commodity Exchange Act and Part 38 of the Rules of the Commodity Futures Trading Commission, Commodity Futures Trading Commission (September 25, 2012).

⁴ Since the date trueEX filed its MAT Determination with the Commission, additional liquidity providers have begun streaming executable, firm bids and offers on trueEX's order book.

the trueEX SEF or DCM through an encrypted, secure Internet portal or through a secure, proprietary application programming interface. The trueEX customer onboarding team provides customers with unique log-in credentials and coordinates with each of them to ensure their software is properly configured. After establishing a connection, the trueEX onboarding team performs extensive testing of each customer's connection in a testing environment prior to connecting to the live trading platform. The trueEX connection testing and certification process includes simulating more than 100 trading activities and platform activities using the customer's newly established connection. Testing can be conducted in coordination with a customer's live clearing firm or a trueEX simulated clearing firm. As a further precaution, trueEX monitors customers' connections using third-party software designed to alert trueEX onboarding staff of unseen connection disruptions.

Furthermore, trueEX provides its market participants with effective risk-management tools including, but not limited to credit limit manager, trading limit controls and client credit "trip switches."⁵ trueEX has also established its first connection to a leading credit limit hub for those clearing firms that wish to manage their clients' risk from a single, central source. Thus, as is consistent with applicable Commission regulations, each order placed on the trueEX SEF or DCM is screened against risk limits set by the clearing firms at the time of order entry.

Although trueEX believes consideration of the FSR's additional conditions are inconsistent with Commission regulations §§ 38.12 or 37.10, trueEX believes that SEFs and DCMs that offer MAT Contracts for trading should have appropriate connectivity and functionality established. trueEX has demonstrated as a fully approved DCM that it has established appropriate connectivity and functionality to ensure a secure and integral market for trading MAT Contracts and the Commission has thoroughly reviewed and tested that connectivity and functionality.

II. While the Commission has conducted a thorough review of trueEX infrastructure, connections and functionality, trueEX does not believe CFTC regulations §§ 38.12(a)(2) and 37.10(a)(2) require the Commission to conduct this type of testing.

Commission regulations §§ 38.12 and 37.10 allow a SEF or DCM to submit a determination (a "Submission") that a swap is available to trade for purposes of § 2(h)(8) of the CEA; provided that: (a) the SEF or DCM lists or offers the swap for trading; and (b) the relevant swap is subject to the clearing requirement of Commission regulation § 39.5.⁶ A determination by a SEF or DCM must consider, as appropriate, one or more of six enumerated regulatory factors.⁷

trueEX does not agree that its MAT Determination should be deemed certified if and only if the Commission has: (i) thoroughly tested the new infrastructure and processes established by trueEX; (ii) concluded that all necessary connections between various market participants have been established; and (iii) verified that trueEX is capable of executing MAT Contracts on its order book. As the FSR notes in the Comment Letter, the Commission declined to adopt a factor from the proposed rule that would have required consideration of whether a SEF's or DCM's trading

⁵ trueEX demonstrated the functionality of its credit management and trading limit tools as part of the trueEX DCM application process.

⁶ See generally, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, 78 Fed. Reg. 33606 (June 4, 2013).

⁷ *Id.*

platform would support trading in the swap.⁸ The Commission found such a consideration redundant in light of the listing requirement in Commission regulations §§ 38.12(a)(2) and 37.10(a)(2).⁹ The Commission's review of a SEF's or DCM's infrastructure, processes, connections and functionality are all directly and adequately addressed through the appropriate regulatory channel (i.e., the SEF or DCM registration and designation processes, respectively).¹⁰ Additional comprehensive review by the Commission as recommended by the FSR would lead to duplicative and redundant regulatory administration and may further delay implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

B. Rulebooks

The FSR recommends that Submissions made by the Execution Venues should not be deemed certified unless and until the Commission has confirmed that the rulebooks and registration applications of each of the Execution Venues are in compliance with the CEA and the regulations promulgated thereunder.¹¹ The Comment Letter describes various perceived inconsistencies between the rulebooks of certain Execution Venues and Commission regulations. Specifically as it relates to Commission-approved trueEX rulebook¹², the FSR suggests that (a) the definition of "Emergency" in the trueEX rulebook is overly broad in light of DMO Staff Guidance,¹³ and (b) three rules in the trueEX rulebook are inconsistent with Commission regulation § 37.9(b). The FSR concludes that the Commission should decline to certify the MAT Determination of trueEX, or the Submissions of the Other SEFs, until inconsistencies such as points (a) and (b) are corrected.¹⁴ trueEX disagrees that these considerations are relevant when analyzing the MAT Determination; however, trueEX takes this opportunity to address each of points (a) and (b) below in the order they are presented in this paragraph.

I. The term "Emergency" as defined in Rule 101 of the trueEX rulebook is consistent with Commission regulation § 40.1.

The trueEX definition of "Emergency" does not grant trueEX broader discretion to take emergency action than permitted by Commission regulation § 40.1 and DMO Staff Guidance. In the DMO Staff Guidance, CFTC staff observes that some SEFs are assuming greater discretion in their rulebooks "to suspend trading privileges under their emergency authority if, in their sole discretion, such action is in the best interest of the SEF."¹⁵ DMO Staff Guidance reminded SEFs that the definition of "emergency" must be consistent with, and not broader than, the

⁸ See, Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, at 33613 (Discussing adoption of revised §§ 38.12(a)(2) and 37.10(a)(2)).

⁹ Commission regulations §§ 38.12(a)(2) and 37.10(a)(2) require SEFs or DCMs to demonstrate that they list or offer that swap for trading on their trading systems or platforms as a condition precedent to filing a Submission with the Commission.

¹⁰ For example, SEF Core Principle 14 requires, among other things, a SEF to implement system safeguards to ensure continued order processing and trade matching ability, and DCM Core Principle 20 requires that DCMs adopt a program of risk analysis and oversight to address the development, operation, reliability, security and capacity of automated systems.

¹¹ See, Comment Letter at pg. 8.

¹² See generally, In re Matter of the Request of trueEX LLC for Designation as a Contract Market.

¹³ Letter from CFTC Division of Market Oversight to All CFTC Registered Swap Execution Facilities and Applicants for Registration as a Swap Execution Facility, Vincent A. McGonagle, Director of the Division of Market Oversight, (November 15, 2013).

¹⁴ See, Comment Letter at pg. 10.

¹⁵ See, DMO Staff Guidance at pg. 4.

Commission's regulation.¹⁶ Consistent with the definition of "emergency" in Commission regulation § 40.1, all discretion granted to trueEX to take emergency action is strictly subject to an opinion of its Board, or a duly appointed designee, that immediate action is required because of a threat, or possible threat, to the "fair and orderly trading in, or the settlement or integrity of, any Contract."¹⁷ In fact, the Commission has reviewed and expressly approved this definition as it appears in trueEX's current rulebook as part of the Commission's Order designating trueEX as a contract market.¹⁸ trueEX is acutely aware of the market's sensitivity to excessive SEF and DCM discretion and, consistent with DMO Staff Guidance and Commission regulation § 40.1, trueEX has not adopted a standard which would permit the exercise of trueEX's sole discretion.

II. The Commission-approved trueEX rules requiring a five-second delay before crossing orders on the trueEX DCM order book is consistent with Commission regulation § 38.152 and the CEA.

The FSR argues that three rules¹⁹ in the trueEX rulebook requiring customers to expose certain orders to the market for five seconds before crossing them²⁰ are inconsistent with Commission regulation § 37.9, which provides a default 15-second delay between exposing and crossing certain orders.²¹ Commission regulation § 37.9(b)(1) provides that a SEF shall require that "a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the [SEF]'s Order Book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15 second time delay between the entry of those two orders into the Order Book."²² Three of trueEX rules permit trueEX customers to cross orders on the DCM order book after exposing them to the market for 5 seconds. The FSR believes these rules are inconsistent with Commission regulation § 37.9(b).

As a threshold matter, the order book on which trueEX lists MAT Contracts is offered through its DCM, which is subject to and governed by Part 38²³, not Part 37, of Commission regulations. Commission regulation § 38.152 generally requires that the rules of a DCM prohibit pre-arranged trading, but the Commission clarified in the preamble of Part 38 that "pre-execution communications are permissible if allowed by a DCM's rules that have been certified to or approved by the Commission."²⁴ The relevant trueEX rules are consistent with the CEA and Commission regulation § 38.152 because trueEX provided a sound explanation for the 5-second

¹⁶ *Id.*

¹⁷ See, trueEX LLC Rulebook at pg. 4-5 (*available at*: <http://www.trueex.com/rules-and-notice>).

¹⁸ See, In re Matter of the Request of trueEX LLC for Designation as a Contract Market, at pg. 2.

¹⁹ See, trueEX LLC Rulebook, rules 524(c)(iii), 520(a) and 518(b)(i).

²⁰ Crossing orders occurs when: (i) a customer of an exchange engages in some form of pre-execution arrangement or pre-execution negotiation of a transaction; and (ii) either (x) internalizes the order by executing opposite its underlying customer's order, or (y) executes two of its underlying customers' orders against each other. See generally, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33502 (Discussing the Commission's determination regarding pre-arranged executions on an order book).

²¹ See, Comment Letter at pg. 8.

²² See, 17 C.F.R. § 37.9(b)(1).

²³ See, MAT Determination at Submission Cover Sheet. trueEX addresses the Comment Letter as if it intended to analyze the MAT Determination under applicable Commission regulations of Part 38, as well as Commission regulations of Part 37. trueEX respectfully suggests that the Commission consider the FSR's failure to analyze the MAT Determination under Commission regulations of Part 38 when weighing the merits of the Comment Letter.

²⁴ See, Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36612, 36626 (June 19, 2012).

time delay, and the Commission reviewed and approved the relevant rules as part of the trueEX DCM application.²⁵

Although it appears Commission regulation § 37.9(b)(1) does not apply to trueEX's DCM order book,²⁶ trueEX's 5-second delay is consistent with the Congressional intent to protect market participants from abusive trade practices²⁷ underlying that regulation. The Commission stated in the preamble of final Part 37 its belief that the 15-second time delay should serve as a *default* time delay.²⁸ In addition to Commission regulation § 37.9(b)(1), the Commission promulgated its regulation § 37.9(b)(2), which permits SEFs to adjust the time delay based upon liquidity or other product-specific considerations.²⁹ The 5-second time delay rules of trueEX are consistent with Commission regulation § 37.9(b) and the CEA in light of the nascent state of the exchange-traded swaps market. trueEX believes that in approving the trueEX rules the Commission struck the appropriate balance between preventing market abuse and encouraging market liquidity.

C. Consistent with Commission regulation §§ 38.12 or 37.10, the MAT Determination presents data that applies equally to those MAT Contracts with similar liquidity profiles.

The FSR suggests that the MAT Determination is inconsistent with Commission regulation §§ 38.12 or 37.10 because “certain data in the [MAT Determination] is presented with respect to all contracts covered by the [MAT Determination] or, more generally, USD-denominated IRS generally.”³⁰ As an example, the FSR states that the MAT Determination “draws conclusions as to the sufficiency of trading volume in the [MAT Contracts] based on data pertaining to the trading volume of all cleared USD-denominated IRS.”³¹ The FSR concludes that trueEX must amend the MAT Determination to present data separately for each type of swap.³²

To support its conclusion, the FSR cites Commission commentary in the preamble of final Commission regulations §§ 38.12 and 37.10. In the preamble, the Commission clarifies that regulations §§ 38.12 or 37.10 permit a DCM and SEF, respectively, to submit its determinations for a group, category, type or class of swap, and requires the SEF or DCM “to ‘address, in its submission, the applicable determination factor or factors [that] apply to all of the swaps within that group, category, type or class.’”³³ The FSR interprets the Commission's commentary to require all Submissions to analyze all factors enumerated in Commission regulation §§ 38.12(b)

²⁵ See, In re Matter of the Request of trueEX LLC for Designation as a Contract Market, at pg. 2.

²⁶ trueEX also notes that Commission regulation § 37.9 applies to intermediated trades executed by a “broker or dealer” on behalf of one or more of its customers. Currently, the Commission Order designating trueEX as a contract market does not permit trueEX customers to execute trades on an intermediated basis. trueEX's application to permit intermediated trades on its DCM is pending Commission review and approval. See, trueEX LLC Submission #2013-01 (January 14, 2013).

²⁷ See, Core Principles and Other Requirements for Designated Contract Markets, at 36673.

²⁸ See, Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476, 33503 (June 4, 2013).

²⁹ *Id.*

³⁰ See, Comment Letter at pg. 12.

³¹ *Id.*

³² *Id.*

³³ See, Comment Letter at 10 (*citing to*, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33611).

or 37.10(b) on a swap-by-swap basis, regardless of whether the data applies equally to a group of swaps with similar liquidity profiles.³⁴

trueEX disagrees with the FSR's interpretation that the Commission's commentary requires a swap-by-swap analysis in all instances in light of additional commentary to the contrary. Earlier in the commentary to which the FSR cites, the Commission correctly decided that it would allow "SEFs and DCMs to submit determinations for a group, category, type or class of swap to provide greater efficiency to the available-to-trade determination process."³⁵ However, "to address commenters' concerns that swaps within a group... may have different liquidity and trading characteristics",³⁶ the Commission clarified that analysis of the regulatory factors must apply to all swaps within a group. trueEX believes the Commission expects a swap-by-swap analysis only where "swaps within a group, category, type or class may have different liquidity and trading characteristics."³⁷

As the Comment Letter notes³⁸ and pursuant to the Commission's commentary,³⁹ trueEX clearly defined two groups of swaps (i.e., eight spot starting swaps and nine forward starting swaps each with whole-year tenors⁴⁰) that form the MAT Contracts and applies the relevant data equally to the groups that share similar liquidity profiles. trueEX appropriately cited data on all cleared USD-denominated IRS because all MAT Contracts are USD-denominated.⁴¹ Additionally, Exhibit D of the MAT Determination illustrates that for September 2013 alone the trade count of MAT Contracts made up a healthy 77% of the overall trade count of USD-denominated interest rate swaps and 72% of the LIBOR referencing USD-denominated interest rate swaps reported to DTCC's swap data repository for that period.⁴² Mindful of the different liquidity profile for forward starting contract and spot starting contracts, Exhibit D of the MAT Determination also illustrates for the Commission the trade count difference between spot starting MAT Contracts and forward starting MAT Contracts.⁴³ Finally, the data to which the FSR refers⁴⁴ addresses only two of the six regulatory factors, none of which are dispositive on their own.⁴⁵ Consistent with Commission regulations §§ 38.12 or 37.10 and Commission commentary, the MAT Determination presented data that applied equally to the applicable groups of MAT Contracts.

³⁴ See, Comment letter at 10.

³⁵ See, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33611.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, *supra* note 34.

³⁹ The Commission clarified that "a SEF and DCM will be allowed to define the scope of the group, category, type or class of swap that it determines is available to trade." See, *supra* note 35.

⁴⁰ The tenors of the spot starting MAT Contracts are 2, 3, 5, 7, 10, 15, 20 and 30 years, and tenors of the forward starting MAT Contracts are 1, 2, 3, 5, 7, 10, 15, 20 and 30 years. See, MAT Determination at Exhibit A.

⁴¹ See, MAT Determination at pg. 3.

⁴² See, MAT Determination at Exhibit D, slides 6-7.

⁴³ See, MAT Determination at Exhibit D, slide 8.

⁴⁴ It is unclear to which data the Comment Letter refers because proper citations are omitted. For purposes of this letter, trueEX assumes that the FSR intended to refer to data summarized in § c(ii) on pages 3-4 of the MAT Determination. trueEX urges the Commission to confirm with the FSR the data to which it referred if the Commission uses the relevant portion of the Comment Letter as a basis for its decision to deny certification of the MAT Determination.

⁴⁵ See, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33613.

D. Conclusion

trueEX appreciates the FSR's concerns for market integrity and robust Commission oversight, but trueEX disagrees with the FSR that: (i) all Execution Venues face operational obstacles; (ii) any perceived regulatory inconsistency with their rulebooks are substantial enough to merit delaying implementation of the § 2(h)(8) of the CEA; and (iii) Commission regulations §§ 38.12 or 37.10 or Commission commentary requires a swap-by-swap analysis of the data presented in the MAT Determination.⁴⁶ For the reasons described in this letter, trueEX respectfully requests that in evaluating the MAT Determination the Commission: (a) disregard the concerns described in pages 2-10 of the Comment Letter; and (b) decline to adopt an interpretation of Commission regulations §§ 38.12(b) or 37.10(b) that would prevent trueEX from presenting data that applies equally to the MAT Contracts, consistent with those Commission regulations.

The views expressed in this letter are solely those of trueEX and may be different than those of the Other SEFs. If you have questions regarding this letter, please contact me at (312) 320-8934 or by email at fran@trueex.com.

Sincerely,



Fran Kenck
Chief Regulatory Officer
Chief Compliance Officer

cc: The Honorable Gary Gensler
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
The Honorable Mark P. Wetjen
Vincent A. McGonagle – Director, DMO
Phil Colling – Assistant Director, Product Review, Financial Products Group, DMO
Roger Smith – Attorney Advisor, DMO

⁴⁶ trueEX declined to address the FSR's concern with the importance of adequate oversight because: (i) trueEX believes that the Commission is exercising adequate oversight; and (ii) that portion of the Comment Letter lacks sufficient detail or specificity upon which any reasonable conclusion may be based.