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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 ISDA/SIFMA comments on trueEX Submission for a Made Available to Trade (Submission No. 2013-14)**

Dear Ms. Jurgens:

On October 21, 2013, trueEX LLC (“**trueEX**”)<sup>1</sup> 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 are 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 20, 2013, the International Swaps and Derivatives Association, Inc. and the Securities and Financial Markets Association (collectively, the “**Associations**”) jointly submitted to the Commission a comment letter (the “**Comment Letter**”) regarding: (i) the MAT Determination; and (ii) extraterritorial related market concerns. trueEX appreciates the Associations’ thoughtful comments and takes this opportunity to address some of the content of the Associations’ Comment Letter.<sup>2</sup>

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<sup>1</sup> trueEX operates as both a designated contract market and temporarily registered swap execution facility. The Commission approved trueEX’s application as a DCM on September 25, 2012 and granted trueEX temporary registration as a SEF on September 20, 2013.

<sup>2</sup> trueEX notes that the MAT Determination was filed pursuant to Commission regulation § 38.12, but the Associations analyze it under Commission regulation § 37.10. *See*, MAT Determination at Submission Cover Sheet. trueEX addresses the Comment Letter as if it intended to analyze the MAT Determination under applicable Commission regulation § 38.12, as well as Commission regulation § 37.10.

## A. MAT Determination

### I. trueEX possesses the operational ability to arrange for clearing of the MAT Contracts.

As described below in Section A. II of this letter, trueEX disagrees with the Associations' regulatory analysis but it agrees that it is important for market integrity that a swap execution facility ("SEF") or a designated contract market ("DCM") that lists swaps that are available to trade pursuant to CFTC regulations §§ 38.12(a)(2) and 37.10(a)(2) ("MAT Contracts") is operationally prepared to trade MAT Contracts. As such, trueEX has established legal relationships and operational connectivity with numerous sell-side, buy-side and clearing firm market participants. Multiple liquidity providers currently stream executable, firm bid and offers in the MAT Contracts on the trueEX order book.<sup>3</sup> trueEX connects directly to the derivative clearing organizations ("DCOs"), CME and LCH, through a secure application programming interface to ensure transmission of the clearing message to the DCO within millisecond and confirmation from the DCO of the clearing status as soon as technologically practicable after execution. By removing reliance on middleware platforms, trueEX's direct connection to the DCOs substantially mitigates the risk of clearing delay and potential for broken trades. trueEX has connected to a leading swap data repository and regularly reports all required data for the swaps executed on trueEX's DCM order book in accordance with Commission regulations. Our customers and their clearing firms may access the trueEX SEF and DCM through a secure Internet portal or through a secure, proprietary application programming interface. The trueEX customer onboarding team extensively tests each customer's connection in a testing environment prior to connecting to the live trading platform.

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."<sup>4</sup> 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 CFTC regulations, each order placed on the trueEX SEF or DCM is screened against risk limits at the time of order entry.

Finally, the operational ability of trueEX has 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 of trueEX 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, trade processing workflow and order book operations.

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<sup>3</sup> 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.

<sup>4</sup> trueEX demonstrated the functionality of its credit management and trading limit tools as part of the trueEX DCM application process.

Over the months that followed filing of the DCM application, trueEX established a channel of ongoing communication with numerous CFTC staff members and timely responded 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 for the Commission multiple demonstrations of its trading functionality 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.<sup>5</sup>

Although CFTC regulations §§ 38.12(a)(2) or 37.10(a)(2) do not require a demonstration of operational ability, trueEX agrees with the Associations that SEFs and DCMs should have the operational ability to arrange for clearing MAT Contracts. As it has demonstrated above, trueEX has the operational capability necessary to arrange clearing for MAT Contracts.

**II. While trueEX has demonstrated that it possess the operational ability to clear MAT Contracts, CFTC regulations §§ 38.12(a)(2) and 37.10(a)(2) do not require such a demonstration.**

CFTC regulations §§ 38.12(a)(2) and 37.10(a)(2) require a DCM and SEF, respectively, that makes a swap available to trade to “demonstrate that it lists or offers that swap for trading on its trading system or platform” (the “**Listing Requirement**”). The Associations argue that there is a “clear implication” that the Listing Requirement will *only* be met if a SEF demonstrates its operational ability to arrange for clearing of the relevant contracts.<sup>6</sup> According to the Associations, the phrase “operational ability” includes “establishing basic connectivity between SEFs<sup>7</sup> and their users, linkages to clearing, and arranging for pre-trade screening.”<sup>8</sup>

trueEX does not agree that the Listing Requirement of CFTC regulations §§ 38.12(a)(2) or 37.10(a)(2) will only be met if a SEF or DCM demonstrates its operational ability to arrange for clearing of the relevant contracts. As the Associations note, 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 platform would support trading in the swap<sup>9</sup> because the Commission found it redundant in light of the Listing Requirement. trueEX agrees with the Commission’s conclusion regarding the proposed rule and believes that the operational ability of a SEF or DCM to support trading in

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<sup>5</sup> 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).

<sup>6</sup> See, Comment Letter at pg. 3.

<sup>7</sup> trueEX notes that the Associations omit DCMs from this analysis.

<sup>8</sup> See, supra note 6.

<sup>9</sup> See, Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, 78 Fed. Reg. 33606, 33613 (June 4, 2013)(Discussing adoption of revised Listing Requirement).

a given swap contract is directly addressed through a combination of the (i) SEF or DCM designation processes,<sup>10</sup> and (ii) product listing process of §§ 40.2 or 40.3.<sup>11</sup>

trueEX has satisfied the regulatory requirements of the Listing Requirement and certified the MAT Contracts with the Commission pursuant to Commission regulation § 40.2. Additionally, trueEX has demonstrated its operational ability through ongoing review by the Commission as part of trueEX's SEF and DCM application, registration and designation process. Requiring an additional demonstration as the Associations suggest would lead to duplicative and redundant regulatory administration.

## **B. Extraterritorial Concerns.**

### **I. CFTC Regulations §§ 38.12(a)(2) or 37.10(a)(2) do not and should not require consideration of 24-hour SEF or DCM trading capability.**

The Associations argue that SEFs or DCMs that list MAT Contracts should make such contracts available for trading on a 24-hour basis. The Associations believe that parties outside of the U.S. may be subject to the trade execution requirement but, due to differing time zones, may be unable to trade the relevant contracts if (i) the contracts are Required Transactions (as that term is defined Commission regulation § 37.9), and (ii) trueEX is closed.<sup>12</sup> trueEX understands the Associations' concerns with extraterritorial issues, but as a threshold matter, trading hours are not subject to consideration under CFTC regulations §§ 38.12(a)(2) or 37.10(a)(2). In fact, the Commission declined to adopt a trading hour requirement in the final rule despite one commenter's suggestion that trading hours be taken into consideration when evaluating the usual number of bids and offers pursuant to §§ 37.10(b)(6) and 38.12(b)(6).<sup>13</sup> trueEX believes that such extraterritorial issues are best addressed by the Commission through cross-border guidance and related rulemakings.

While trueEX understands the Associations' concerns, it notes that the Associations' analysis fails to account for the hours of operation of DCOs. As an independent SEF and DCM subject to the straight-through processing requirements of CFTC regulations and related CFTC staff guidance, the trading hours of cleared contracts listed on trueEX are subject to the hours of clearing acceptance by each of the DCOs through which trueEX listed contracts clear.<sup>14</sup> It would be inconsistent with the Commission's goals of rapid straight-through processing and clearing to require SEFs and DCMs to trade contracts on a 24-hour basis where the DCOs that clear those contracts do not accept them for clearing on a 24-hour basis.

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<sup>10</sup> 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.

<sup>11</sup> The Commission noted in the final rule release that a swap that is the subject of an available to trade determination "would be certified or approved under §40.2 or § 40.3 of the Commission's regulations prior to listing the swaps for trading." See Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33610 n.69.

<sup>12</sup> trueEX notes that the Comment Letter only focuses on the trading hours of trueEX and fails to address the trading hours of other SEFs or DCMs that list MAT Contracts for trading. As such, the scope of the Associations' analysis in this regard is too narrow.

<sup>13</sup> See, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, at 33612 n.105.

<sup>14</sup> Neither CME nor LCH operate to clear swaps on a 24-hour basis.

## II. Registration with foreign jurisdictions is a business consideration and is not appropriate for regulatory made available to trade determinations.

The Associations' argue that certain customers, including non-U.S. customers, of U.S. swap dealers may not be able to access the U.S. swap market because local law or regulation prohibits such customers from executing swaps on a SEF that has not been granted the appropriate registration or license by local regulators.<sup>15</sup> While the Associations did not cite any specific foreign regulatory or legal authority, trueEX and the SEF community are aware of foreign registration requirements. The SEF community, in general, is taking proper steps to comply with local rules, law and registration requirements of those jurisdictions that each respective SEF feels are most appropriate in light of its business strategy.<sup>16</sup> trueEX strongly believes that consideration of foreign registration requirements are wholly inappropriate for purposes of the MAT Determination, and, in any instance, should be left to each individual SEF, as compliance with and/or registration under a foreign jurisdiction's regulatory regime may not be appropriate given its business strategy.

### C. Conclusion

trueEX commends the Associations for their commitment to market integrity and efficacy and is grateful for their support; however, trueEX does not believe that the Associations' analysis of the Listing Requirement is consistent with the text or intent of CFTC regulations §§ 38.12(a)(2) or 37.10(a)(2), or that consideration of the extraterritorial issues outlined in the Comment Letter are appropriate for or permitted under CFTC regulations §§ 38.12(a)(2) or 37.10(a)(2). For the reasons described in this letter, trueEX respectfully requests that in evaluating the MAT Determination the Commission: (i) decline to adopt the listing requirement interpretation set forth by the Associations in section II of the Comment Letter; and (ii) disregard the extraterritorial issues described in section III of the Comment Letter.

If you have questions regarding this letter, please contact me at (312) 320-8934 or by email at [fran@trueex.com](mailto: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

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<sup>15</sup> *Supra*, note 6.

<sup>16</sup> For example, various SEFs have chosen to seek and been granted exemption from registration as a recognized exchange with the Ontario Securities Commission. *See generally*, In the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as Amended (2013), 36 OSC Bull 9719.