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29 November 2013

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Submitted via www.cftc.gov

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

Dear Sir/Madam:

Markit¹ is pleased to submit the following comments to the Commodity Futures Trading Commission (the “**CFTC**” or the “**Commission**”) in response to the “made-available-to-trade” (“**MAT**”) determinations submitted to the Commission by Javelin SEF, LLC (“**Javelin**”), trueEX, LLC (“**trueEX**”), TW SEF LLC (“**TW SEF**”) and MarketAxess SEF Corporation (“**MarketAxess**”) with respect to interest rate swaps (“**IRS**”) and credit default swaps (“**CDS**”) on the relevant facilities pursuant to sections 37.10 and 40.6 of the CFTC’s regulations.

Introduction

Markit is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Our products and services, which are grouped into the business lines of Information, Processing and Solutions, are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities.

¹Markit is a financial information services company with over 3,000 employees in North America, Europe, and Asia Pacific. Please see www.markit.com for additional information.

As part of our index offering across various asset classes, Markit provides a number of leading fixed income indices, including Markit CDX and Markit iTraxx, upon which tradable CDS are based. CDS that reference the Markit CDX and Markit iTraxx indices are among the most liquid traded credit derivatives in the world and have been referred to in the various MAT determinations.²

Markit has been actively and constructively engaged in the discussion regarding regulatory reform of the financial markets. We regularly provide regulatory authorities with our insights on current market practice, for example in relation to valuation methodologies, liquidity measurement, the use of reliable and secure means to provide daily marks, or pre-trade credit checks to achieve clearing certainty. We have also advised regulatory bodies on potential approaches to enable the timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying their regulatory obligations. Over the last several years, we have participated in numerous stakeholder meetings and we have submitted over 90 comment letters³ to regulatory authorities around the world. For example, we previously submitted a comment letter to the CFTC in relation to the process for making and certifying MAT determinations.⁴

Markit's general comments

We are concerned that certain of the swaps covered by the various MAT determinations⁵ will not have enough liquidity to support mandatory trading, which will have a detrimental effect on the swaps markets. We believe that MAT determinations should be closely tied to the liquidity of a given swap, and we appreciate that the list of

² Based on information available from the Trade Information Warehouse that is maintained by the Depository Trust and Clearing Corporation (DTCC), the outstanding notional amount of Index CDS based on Markit indices is USD \$10.7 trn, USD 9.6 trn of which is in untranching products.

³ This number includes responses submitted by MarkitSERV, a now fully-owned subsidiary of Markit Group.

⁴ Markit comment letter in response to the proposed rulemaking to implement certain requirements included in Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act titled Process for a Designated Contract Market or Swap Execution Facility to make a Swap Available to Trade. (Feb 13, 2012).

⁵ See Javelin Determination of Made Available to Trade of certain Interest Rate Swaps made Pursuant to Parts 37 of the Rules of the Commodity Futures Trading Commission (Submission No. 13-06R) (Oct. 31, 2013); MarketAxess SEF Corporation Made Available to Trade ("MAT") Submission of Certain Credit Default Swaps (Oct. 30, 2013); TW SEF LLC- Self-Certification {or Swaps to be Made Available to Trade (Oct. 28, 2013); Made Available to Trade ("MAT) Submission of Certain Interest Rate Swaps ("IRS") pursuant to CFTC Regulation 40.6 (trueEX LLC submission #2013-14) (Oct. 21, 2013).

factors to consider in making an MAT determination⁶ largely relate to a swap's liquidity. We understand that establishing objective liquidity measurements for swaps can be challenging, but we believe that they could be derived from a combination of observable factors including, but not limited to, the trade frequency, the average transaction size, the bid/offer spread and the number of market makers for a given swap as has been highlighted in previous comment letters in relation to the MAT determination. This is important because a mandate to trade certain less liquid swaps through a SEF could effectively and unintentionally eliminate liquidity in those instruments by artificially requiring pre-trade transparency. This, of course, would disrupt market functioning. Importantly, MAT determinations will not only impact the liquidity of the swaps market directly but may also result in other unintended consequences and currently unknown changes to market structure without any articulated benefits.

We therefore believe that MAT determinations, and the associated trading mandate, should initially apply to only those individual swaps that have high liquidity and can therefore be traded electronically without risking any disruption to market functioning. Also, MAT determinations should be performed at levels that are sufficiently granular in order to reflect differences in liquidity between variations of a given swap. Specifically, although it is possible to price any point on the USD IRS curve via techniques such as interpolation, there is no observable or implied liquidity at a great number of points. This is especially true if one of the attributes of an order is an "aged coupon" that is now significantly off market, requiring a premium payment by the responding party to the request.⁷

We note that the MAT determinations submitted for Index CDS have adopted this approach of subjecting only the most liquid swaps to the trading mandate.⁸ We believe that the approach should be similar for IRS. Specifically, only spot starting IRS with the most liquid "benchmark" tenors of 2, 3, 5, 7 and 10 years, along with the active international money market ("*IMM*") dated periods should be initially classified as MAT. This approach would allow the Commission to monitor the appropriateness of MAT determinations for IRS in light of the six criteria detailed in the MAT rules over a

⁶ See Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available To Trade, 78 Fed. Reg. 33606, 33630 (June 4, 2013).

⁷ Specifically, many CCPs require that to exit an existing swap transaction all characteristics of an existing trade in terms of maturity, roll dates, fixed rate, etc. must be matched. Thus, if one entered into a 10 year swap today at a rate of 2.80% and wanted to exit this swap next month when on-the-run 10 year yields may have fallen to 2.60%, one would need to find a counterparty willing to trade at an above market coupon of 2.80%. Even though it is mathematically possible to price such swap based on the on-the-run curve the chances of finding many counterparties for this transaction will be limited.

⁸ See MarketAxess SEF Corporation Made Available to Trade ("MAT") Submission of Certain Credit Default Swaps (Oct. 30, 2013); TW SEF LLC- Self-Certification {or Swaps to be Made Available to Trade (Oct. 28, 2013).

reasonable period of time before potentially subjecting a broader set of instruments to mandatory trading.

Further, we believe it is problematic that the final rules would not allow an MAT determination to be removed unless the swap is no longer listed by any SEF and the Commission makes a determination that the swap is no longer MAT.⁹ This is because experience has shown that the liquidity of a given swap, or even the entire swaps market in certain circumstances, can vary widely over time. As a result, a swap that trades actively today might quickly become illiquid in the future, and vice versa. We believe that MAT determinations should be reserved for the most liquid swaps, so we also believe that there must be an efficient method to remove an MAT classification from a given swap in the event that its liquidity drops. An application for removal of MAT status could be made by individual SEFs, industry participants or the Commission itself and should be subject to public consultation.

Specific comments in relation to the MAT certification by TW SEF

We appreciate TW SEF's analysis of Markit's CDX and iTraxx indices. However, we also have the following comments and clarifications regarding their MAT determination (the "**TW SEF Determination**") and the description of Markit's indices:¹⁰

- The TW SEF Determination states that MAT CDS indices should be "[a]t any time, the then current OTR Series and the then next Series will replace the current one, on a rolling basis."¹¹ However, the new series of these CDS Indices only becomes tradable once it has become OTR. We would therefore recommend that the statement is changed to "... the current on-the-run and the most recent off-the-run series, on a rolling basis."
- The TW SEF Determination states that "the reference constituents change every six months in order to ensure that the underlying swaps remain the most liquid..."¹² Although some reference constituents might change for a new index series compared to the previous one, TW SEF should note that, in reality, most names remain the same for consecutive series of the index.

⁹ See 17 C.F.R. § 37.10.

¹⁰ TW SEF LLC- Self-Certification (or Swaps to be Made Available to Trade (Oct. 28, 2013). As an initial note, we recommend that TW SEF utilize the correct naming convention throughout its determination for the relevant CDS Indices, namely Markit CDX.NA.IG and Markit iTraxx Europe.

¹¹ TW SEF Determination, p. 3.

¹² *Id.* at 6.

- The TW SEF Determination describes the maturity date after the roll as “the existing, most liquid, OTR index series moves down the curve across several standard maturities (which are 3yr, 5yr, 7yr and 10yr) and a new series is established (which is numbered to avoid confusion (e.g., CDX.NA.IG 21 was formed to take over from the CDX.NA.IG 20)).”¹³ We believe that this description is confusing as there is no “moving down the curve” for an existing or a newly created series of the Index CDS. We believe it would be more appropriate to state that “for the new index series, the maturity date across all tenors will be six months further out than the respective maturities of the current series.”
- For IRS, we believe that the TW SEF Determination should redefine its definition of “spot” by incorporating the following: (i) USD IRS spot is T+2 LDN business days unless this was a NYC holiday when it would roll forward until the next business day;¹⁴ and (ii) USD OIS spot is T+2 NYC days.

* * * * *

Markit appreciates the opportunity to comment on the MAT determinations submitted to the Commission by Javelin, trueEX, TW SEF and MarketAxess. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact us.

Yours sincerely,



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¹³ *Id.*

¹⁴ T+2 LDN business days is not the same as 2 LDN and NYC holidays.