

January 7, 2014

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

Re: Comment on Made Available to Trade Submission by Bloomberg of Certain Credit Default Swaps and Interest Rate Swaps

Dear Ms. Jurgens:

The International Swaps and Derivatives Association, Inc.¹ and the Securities Industry and Financial Markets Association² appreciates this opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") regarding the Made Available to Trade ("**MAT**") Submission by Bloomberg SEF LLC ("**Bloomberg**") of Certain Credit Default Swaps ("**CDS**") and Interest Rate Swaps ("**IRS**" and together with CDS, the "**Submission Swaps**") pursuant to Section 40.6 of the Commission's Regulations.³

Executive Summary

We support the contract-by-contract approach taken by Bloomberg with respect to the six factors set out in Section 37.10(b) (the "**Six Factors**") in the Bloomberg submission. We also support Bloomberg's approach to showing how it meets the listing requirement in Sec. 37.10(a)(2) (the "**Listing Requirement**") by demonstrating how it supports the trading of the Submission Swaps.

¹ The International Swaps and Derivatives Association, Inc.'s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, please visit: www.isda.org.

² SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, DC, is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

³ Letter from Bloomberg SEF LLC to CFTC, Made Available to Trade Submission of Certain Credit Default Swaps and Interest Rate Swaps pursuant to Section 40.6 of the Commission's Regulations (submission #2013-R-9) dated December 5, 2013 (hereinafter, "**Bloomberg Letter**").

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We also agree with Bloomberg's view that certain bespoke swaps, such as non-par swaps, should be excluded from the MAT determination. In addition, we request that the Commission address the cross-border and packaged swap issues that will become even more important as a result of a MAT determination.

I. We support Bloomberg's position that the Six Factors should be addressed on a contract-by-contract basis.

The critical issue addressed by the Six Factors is trading activity and whether there is sufficient liquidity to justify a MAT determination. Classes of swaps will have a large number of potential contracts due to the many permutations of trade dates, maturities, currencies, indices, payment and reset dates and other factors. While these swaps may be of the same class or type, they do not trade against each other. As a result, in order to give a meaningful indication of trading activity with respect to any swap, the Six Factors must be applied on a contract-by-contract basis. We therefore support the contract-by-contract basis approach taken by Bloomberg with respect to the Six Factors.

II. We support Bloomberg's approach in demonstrating how it can support the trading of each contract and meet the Listing Requirement.

The Listing Requirement should not be satisfied simply because a SEF has completed the relevant certification requirements. In order to show that it can support trading, a SEF must demonstrate to the Commission that it has the operational ability to arrange for the execution on a timely basis of Submission Swaps that are being traded.⁴ This operational ability should include the capability to provide swap participants uninterrupted real-time access to its systems. Therefore, we support Bloomberg's decision to include in its letter an analysis of the trading of Submission Swaps on Bloomberg. For example, the Bloomberg Letter states that it has offered each Submission Swap on the Bloomberg Electronic Trading Systems with more than a hundred market participants trading the Submission Swaps during the three months prior to November 1, 2013.⁵ Demonstrating the capability to support the trading of Submission Swaps should be a crucial consideration for the Commission's review of MAT Determinations. Therefore, we support Bloomberg's approach in describing the trading activity on Bloomberg.

III. We support the exclusion of certain bespoke swaps, such as non-par swaps, from the MAT determination.

The Bloomberg Letter states that the following types of contract should not be MAT: non-benchmark swaps, "non-spot starting" swaps, non-par swaps and broken dated swaps. The letter

⁴ Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, 78 Fed. Reg. 33613 (June 4, 2013).

⁵ Bloomberg Letter at 3-4.

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explains that these swaps are "customized and bespoke" and less liquid and therefore should be excluded from MAT.⁶ We agree with this view and support the exclusion of such swaps from the MAT determination.

IV. The Commission should address the extraterritorial issues that arise in connection with MAT determinations.

A. Any MAT determination must consider operational ability to support execution of contracts on a twenty four hour basis and we support Bloomberg's proposal to have twenty four hour trading.

Numerous parties outside the United States are, or depending on the facts, may be subject to the SEF trade execution requirement. Many of these parties and their counterparties have business days and hours that have partial, and in some case minimal, overlap with standard U.S. business days and trading hours. These parties would be unable to trade the Submission Swaps if they are subject to an effective MAT determination (and are thus Required Transactions) and all SEFs that list the Submission Swaps are closed. For any CDS or IRS subject to the trade execution requirement, there should be a requirement that at least one SEF that supports trading of such swap must be open twenty-four hours a day. Otherwise, parties subject to Dodd-Frank will not be able to trade swaps subject to a MAT Determination at times when no SEFs are open. Therefore, we support Bloomberg's proposal, as set out in Exhibit A for each contract, to have trading hours from 00:01 to 24:00 Sunday – Friday (Eastern time).

B. Approving a MAT determination without resolving cross-border SEF issues will fragment liquidity in the relevant swap market.

A MAT determination with respect to the Submission Swaps will require all customers of U.S. swap dealers, including non-U.S. customers, to execute such trades on a SEF. However, many jurisdictions prohibit local customers from trading on a SEF unless that SEF is registered with and/or licensed by local regulators as an exchange or regulated trading facility. This is a potentially cumbersome and lengthy process, and considering the very recent establishment of SEFs generally, not one that SEFs applying for MAT determinations have completed. If the SEFs are not registered with foreign jurisdictions, and the MAT determination requires the Submission Swaps to be executed on a SEF, this will effectively prohibit many foreign customers from executing such swaps with U.S. swap dealers. In addition, many foreign trading platforms do not intend to decide whether to register with the CFTC as a SEF until the extraterritorial application of the SEF registration requirement becomes clearer. Some foreign trading platforms have already prohibited persons with a U.S. nexus from executing on such platforms.

⁶ Bloomberg Letter at B-1 and 7.

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The combination of these factors is likely to fragment international liquidity for trading in the swaps subject to a MAT determination. Many foreign customers will not be permitted to execute on SEFs and so will not have access to the liquidity provided by U.S. swap dealers, while U.S. persons will effectively be shut out of foreign trading platforms that have not yet determined whether they are required to register with the Commission. A MAT determination at this time would prevent the parties from resolving the uncertainties themselves by executing transactions on a bilateral basis. The consequence is by no means trivial: the foreseeable result will be a greatly fragmented market in which Submission Swaps will only be executed on-SEF between two U.S. counterparties or off-SEF outside the U.S. between two non-U.S. counterparties. We strongly urge the Commission to consider and address the cross-border application of the SEF rules in the context of reviewing MAT submissions such as Bloomberg's submission.

V. Packaged trades should not be subject to a MAT determination.

The Bloomberg Letter states that packaged trades with two or more components should not be subject to the trade execution requirement. The letter observes that packaged trades are highly customized and offer efficient risk transfer and an increased range of hedging opportunities.⁷ ISDA strongly supports the view that the individual components of a packaged transaction should not be subject to the trade execution requirement and will prepare a submission to the Commission to address this issue further.

VI. Phase-In

As noted above, the Commission should consider a SEF's ability to meet the Six Factors before making a determination on which products should be included in a MAT determination. We recommend that the Commission consider a contract specific phase-in approach, selecting phase-in periods for contracts based on their liquidity. In such an approach, the Commission should assess the products listed in Exhibit A of Bloomberg's submission to determine each contract's appropriateness for initial phase-in.

VII. Conclusion

For the reasons set out above, we support the contract-by-contract approach to the Six Factors and the approach taken by Bloomberg in showing that it can support the trading of Submission Swaps in the Bloomberg Letter but believe that additional issues need to be addressed.

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⁷ Bloomberg Letter at B-2.

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We appreciate the opportunity to comment on the Bloomberg submission. Please feel free to contact the undersigned at your convenience.

Sincerely,



Robert Pickel
Chief Executive Officer
ISDA



Kenneth E. Bentsen, Jr.
President and Chief Executive Officer
SIFMA

cc: The Honorable Scott D. O'Malia
The Honorable Bart Chilton
The Honorable Mark P. Wetjen