

January 7, 2014

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

Re: Comment on Made Available to Trade Submissions for Certain Interest Rate Swaps and Certain Credit Default Swaps (Industry Filings: IF 13-004,¹ IF 13-005,² IF 13-007,³ IF 13-008,⁴ and IF 13-010⁵)

Dear Ms. Jurgens:

The Wholesale Market Brokers' Association, Americas ("WMBAA" or "Association")⁶ submits the following comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") regarding the Made Available to Trade ("MAT") determinations of Javelin SEF ("Javelin"), trueEX, TW SEF ("TW"), MarketAxess SEF ("MarketAxess"), and Bloomberg SEF ("Bloomberg") for certain interest rate ("IRS") and certain credit default swaps ("CDS") (collectively, the "MAT determinations").

The WMBAA supports the Commission's efforts to create a regulatory regime for the over-the-counter ("OTC") swap market that improves regulatory transparency, promotes competition, and fosters market participant access to a vibrant, affordable source of liquidity. The WMBAA supports transparency in OTC swaps markets for all market participants. WMBAA members' trade execution platforms provide their participants with the most current market information for the express

¹ Letter from Javelin SEF, LLC to CFTC, Javelin Determination of Made Available to Trade ("MAT") of Certain Interest Rate Swaps ("IRS") (Submission No. 13-06R(2)) (Oct. 18, 2013), *available at* <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/javelinsub1306r2.pdf>.

² Letter from trueEX, LLC to CFTC, MAT Submission of Certain IRS (Submission No. 2013-14) (Oct. 21, 2013), *available at* <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/trueexsub201314mat.pdf>.

³ Letter from TW SEF LLC to CFTC, Certification and Amendment to Self-Certification for Swaps to be MAT (Nov. 29, 2013), *available at* <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/twsefamendmatltr112913.pdf>.

⁴ Letter from MarketAxess SEF Corp. to CFTC, MAT Submission of Certain Credit Default Swaps ("CDS"), (Oct. 30, 2013), *available at* <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/marketaxessmatsub103013.pdf>.

⁵ Letter from Bloomberg SEF LLC to CFTC, MAT Submission of Certain CDS and IRS (Submission No. 2013-R-9) (Dec. 5, 2013), *available at* <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/bsefmatdetermltr120513.pdf>.

⁶ The WMBAA is an independent industry body representing the largest inter-dealer brokers operating in the North American wholesale markets across a broad range of financial products. The five founding members of the group are: BGC Partners; GFI Group; ICAP; Tradition; and Tullett Prebon. For more information, please see www.wmbaa.org.

purpose of price discovery and the matching of buyers and sellers, using knowledgeable brokers and sophisticated electronic trading and matching systems to create greater trading liquidity.

The WMBAA is concerned about the application of MAT determinations to “packaged transactions,” which generally involve simultaneous and contingent execution of two or more components.⁷ The WMBAA notes that several market participants, including the International Swaps and Derivatives Association and the Securities and Financial Markets Association,⁸ Citadel LLC,⁹ and twelve Federal Home Loan Banks,¹⁰ have discussed the harmful impact of subjecting packaged trades to a MAT determination at this time in their comments in response to the MAT determinations.

As supported by these submissions, the WMBAA respectfully urges the Commission to confirm that packaged transactions are not subject to a MAT determination at this juncture, given various market infrastructure issues that have not yet been comprehensively examined by the Commission. Rather, the Commission should consider adopting a phased approach to the implementation of the MAT determinations, considering specific contracts based on their liquidity, and excluding packaged transactions from the initial phases of implementation. By adopting a phased approach, the Commission would have additional time to examine the remaining implementation concerns related to packaged transactions and provide proper, clarifying guidance to market participants. Absent cautious implementation of the MAT determinations in this regard, however, market liquidity for packaged transactions would be harmed and market participants would experience increased risk and cost when attempting to execute these transactions.

The WMBAA particularly agrees with the comments provided by the Managed Funds Association (“MFA”) related to packaged transactions, including a detailed explanation of packaged transactions’ definition and purpose.¹¹ The WMBAA urges the Commission to carefully review the MFA’s points

⁷ As the public comment submissions indicate, packaged transactions are frequently identified as including a variety of products, including but not limited to options strategies, swap curves, swap butterflies, swap spreads, basis trades, and invoice spreads.

⁸ See, e.g., Letter from International Swaps and Derivatives Association and Securities and Financial Markets Association to the CFTC (Nov. 27, 2013), at 4, *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59388&SearchText=>.

⁹ See, e.g., Letter from Citadel LLC to the CFTC (Nov. 29, 2013), at 3, *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59401&SearchText=>.

¹⁰ See, e.g., Letter from Sutherland (on behalf of Federal Home Loan Banks) to the CFTC (Dec. 2, 2013) at 5, *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59406&SearchText=>. The Federal Home Loan Banks note that “if only one leg of FHLBank [packaged] transactions (*i.e.*, the [IRS] component) has been designated as subject to a MAT determination (and is thus required to be executed on a SEF), then that standalone leg would be de-linked from, and ultimately impede execution of, the entire [packaged] transaction, which is contingent on the simultaneous execution of the bond and swap legs.” The Federal Home Loan Banks further explain that separating the components would “disrupt the pricing of, and increase the risk associated with, this type of [packaged transaction],” and “any increase in costs for the FHLBanks as a result of the implementation of any MAT determination” would ultimately “negatively impact members’ abilities to provide funding to customers, homeowners and businesses.”

¹¹ See, e.g., Letter from Managed Funds Association to the CFTC (Nov. 21, 2013), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59381&SearchText=>.

on this issue, including the similarities between packaged transactions and the futures market product referred to as an exchange for related position (“EFRP”).

Further, the WMBAA endorses the MFA’s request that the Commission consider the EFRP process for SEF-executed swaps, including any associated MAT determination. The WMBAA agrees that the Commission “should consider exempting from the trade execution requirement certain EFRP transactions such as exchanges for physical, exchanges for swaps, and linked or packaged transactions that may include individual segments which, when independently considered, may be sufficiently liquid for the trade execution mandate on SEFs.”¹² The WMBAA also supports the MFA’s call for phased in implementation of package transactions to “build the foundation for a smoother market transition to mandatory SEF trading”¹³ by imposing a MAT determination “first with the outright (*i.e.*, non-package) benchmark tenors, as they are the building blocks for a wide array of Package Transactions, followed by more complex Package Transactions”¹⁴ on a phased-in basis.

Finally, should the Commission be concerned that exempting packaged trades from the scope of a MAT determination could create anti-evasion issues, as a regulatory analogy, the Commission could consider the approach taken by the Securities and Exchange Commission (“SEC”) in promulgating SEC Rule 611.¹⁵ SEC Rule 611 generally requires that exchanges and other trading centers establish policies and procedures to prevent “trade-throughs” of protected quotations in national market system (“NMS”) stocks. However, the SEC granted an exemption from this restriction for trade-throughs caused by the execution of an order involving one or more stocks that are components of a “qualified contingent trade.”¹⁶

While the WMBAA recognizes the factual distinctions between the two markets, the WMBAA believes that it may be useful for the Commission to review the conditions described above when determining how to exempt packaged trades from the mandatory execution requirements in a way that does not undermine its anti-evasion authority.

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¹² *Id.* at 16.

¹³ *Id.* at 18.

¹⁴ *Id.*

¹⁵ See 17 C.F.R. § 242.611 (2013).

¹⁶ Under this exemption, a “qualified contingent trade” is generally defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) at least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another; (vi) the stock transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade; and (vii) the stock transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least \$200,000.

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The WMBAA looks forward to working with the Commission and staff to resolve any implementation issues related to the MAT determinations, as well as other remaining implementation matters related to, for example, footnote 195 in the final swap execution facility regulations and its relation to the confirmation requirement set forth in Commission rule 37.6(b).

We appreciate the opportunity to share our thoughts on these important issues. Please feel free to contact the undersigned with any questions you may have on our comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shawn Bernardo". The signature is stylized and cursive.

Shawn Bernardo
Chairman, WMBAA

cc: The Honorable Mark Wetjen, Acting Chairman
The Honorable Bart Chilton, Commissioner
The Honorable Scott O'Malia, Commissioner
Vincent McGonagle, Director, CFTC Division of Market Oversight