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

Re: Request for Public Comment on Certification from Javelin SEF, LLC to Implement Available-to-Trade Determinations for Certain Interest Rate Swaps (IF 13-004)¹

Dear Ms. Jurgens:

We appreciate this opportunity to comment on the industry filing submitted to the Commodity Futures Trading Commission (the “Commission”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) relating to the self-certification from Javelin SEF, LLC (“Javelin”) to implement available-to-trade determinations for certain interest rate swaps. We provide our comments from the perspective of large institutional investors on the buy-side of the market. Along with both buy- and sell-side institutions, we support the Commission’s efforts to reduce risk and promote stability and transparency in the U.S. swaps market, while also maintaining a robust market for swaps to suit the varying needs of a wide range of market participants.

We commend the Commission’s efforts to balance the Act’s goals of bringing greater pre-trade and post-trade transparency and liquidity to the swaps market with the need to maintain active buy-side participation in our markets. To that end, we are concerned that the requirement to execute swaps

¹ Javelin initially submitted an available-to-trade determination with respect to a wide range of interest rate swaps on a self-certified basis, pursuant to 17 C.F.R. § 37.10 and § 40.6, on October 18, 2013. Javelin amended its available-to-trade determination on October 31, 2013 (the “First Amended Certification”). On November 29, 2013, Javelin submitted a substantially amended available-to-trade determination (the “Second Amended Certification”) to the Commission. We note that the Second Amended Certification is substantially narrower in scope than the First Amended Certification and addresses many of the concerns we and our clients had with the First Amended Certification, as discussed below. We remain concerned about certain issues related to the Commission’s process for implementing the SEF execution rules. These issues were highlighted in the context of Javelin’s First Amended Certification and may be relevant in the future when the Commission considers proposals to make other categories of swaps available to trade. Therefore, our present comments address both the First Amended Certification and the Second Amended Certification.

on a swap execution facility (“SEF”), if not managed properly, will impede, not support, these goals.

Due to the diligent efforts of the Commission, the markets for trading swaps have undergone historic changes in the past twelve months. In March, swap dealers, major swap participants and active funds became subject to mandatory clearing of certain credit default index swaps and interest rate swaps. The final phase-in of the mandatory clearing requirement for non-financial end users took effect only three months ago, in September. Around the same time, the Commission issued temporary registration to some 18 new SEFs. Before October 2, 2013, trading facilities were not subject to SEF rules. It is our understanding from talking with clients that many buy-side market participants are still implementing the systems and operational improvements necessary to clear swaps and execute swaps on electronic platforms. Some are still going through the on-boarding process with their futures commission merchants and SEFs, and a significant number have yet to execute a single trade on any SEF platform. SEF rules and participant agreements continue to change, both in response to feedback from market participants and in response to new guidance from Commission staff on matters such as straight-through processing and impartial access to SEFs.² While most of these changes are welcome to the buy-side, they are slowing the onboarding process. In the face of this changing environment with a high degree of uncertainty, we are very concerned that imposing mandatory SEF execution on a broad range of transactions may leave behind a meaningful number of buy-side participants that lack the resources to implement the necessary systems changes in so short a time. While we support the Commission’s goal of promoting a more transparent and liquid derivatives market, we do not believe it was Congress’s intent to achieve this goal at the expense of the investors and end-users Title VII of the Act was designed to protect.

For these reasons and the reasons set forth below, we urge the Commission to phase in the SEF execution requirement gradually, starting only with the benchmark swaps. In this regard, we applaud Javelin for addressing concerns that had been raised by market participants regarding the scope of its First Amended Certification by limiting its Second Amended Certification to benchmark swaps.

The electronic trading market has been evolving organically over time and market participants currently can elect to execute benchmark and certain other highly liquid swaps on electronic trading platforms. We are concerned that suddenly and artificially forcing market participants to execute virtually any interest rate swap (particularly non-benchmark swaps) on SEFs would have had significant adverse effects on the markets, including reducing liquidity in this important segment of the swaps market, and are pleased that Javelin and other SEFs³ that have submitted available-to-

² See *Staff Guidance on Swaps Straight-Through Processing* (dated September 26, 2013) and *Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities* (dated November 14, 2013).

³ See *Certification from Bloomberg SEF LLC to Implement Available-to-Trade Determinations for Certain Interest Rate and Credit Default Swaps*, IF 13-010 (Dec. 5, 2013); *Certification from TW SEF LLC to Implement Available-to-Trade*

trade determinations have limited those determinations to benchmark swaps. Many non-benchmark swaps are not currently traded electronically. If a swap that is not currently traded electronically had received a “made-available-to-trade” (“MAT”) determination, investors would have been forced to choose between assuming additional new liquidity risk (that they would not previously have had to face) or to pull back from the swaps market, thereby reducing overall liquidity and frustrating the investment goals of those pulling back. Mandatory trading of insufficiently liquid products on SEFs would have increased participants’ risk further by forcing market participants into more standardized swap terms and limiting the ability to customize swaps or, in some cases, to enter into a swap as component of a strategy or portfolio transaction (as described in more detail below). Therefore, we support Javelin’s and other SEFs’ proposals to limit their initial available-to-trade self-certifications to benchmark swaps.

The Commission has acknowledged the concerns of market participants regarding the consequences of imposing the trade execution requirement on illiquid swaps. The Commission stated that it “believes that the part 40 process is appropriate and well-suited to moderate this possibility and views the adopted determination factors as probative of whether an actual trading market exists.”⁴ The Commission’s reliance on the Part 40 process is based on its belief that “SEFs . . . will have an understanding of the markets that they list for trading and . . . are best positioned to make appropriate available-to-trade determinations.”⁵ It is our understanding that only a small fraction of interest rate swaps currently trade on electronic platforms, and we question whether entities such as Javelin (whose trading platform currently has almost no trading volume in interest rate swaps), are in the best position to make appropriate available-to-trade determinations.⁶ We support Commissioner O’Malia’s recent statement that his “personal preference would be for the Commission and not staff to approve initial MAT determinations. The Commission must make such determinations on a contract-by-contract basis and based on data. Such an approach would assist

Determinations for Certain Interest Rate and Credit Default Swaps, IF 13-007 (Nov. 29, 2013); *Certification from trueEX, LLC to Implement Available-to-Trade Determinations for Certain Interest Rate Swaps*, IF 13-005 (Oct. 21, 2013).

⁴ *Final Rule: Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act*, 78 Fed. Reg. 33606 at 33622 (June 4, 2013) (the “Adopting Release”). Furthermore, we note the Commission’s statement in the Adopting Release that it is “inherently limited by a lack of available data in attempting to quantify the costs and benefits of implementing the trade execution compliance schedule.” See Adopting Release at 33620. We believe that these limitations support a gradual phase-in of the SEF execution requirement so the Commission, working together with all stakeholders, can avoid unnecessarily disrupting the markets.

⁵ See Adopting Release at 33624.

⁶ Under the Commission’s part 40 process, a MAT self-certification submitted by a SEF that is subject to a review period pursuant to 17 C.F.R. § 40.6(c) will become effective “unless the Commission . . . objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission’s regulations.” 17 C.F.R. § 40.6(c)(3). We believe that broad MAT determinations that extend beyond benchmark swaps are inconsistent with the Commission’s regulations because they could decrease liquidity in the swaps markets, for the reasons described in this letter.

the Commission in making policy decisions designed to promote competition and transparency, and not drive up costs and hurt liquidity.”⁷

Furthermore, we believe that Javelin’s First Amended Certification was inconsistent with the Commission’s regulations because it did not meet the requirements of 17 C.F.R. § 37.10. Part (b) of that section requires each MAT submission to consider the following factors with respect to each swap that is proposed to be MAT: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; and (6) the usual number of resting firm or indicative bids and offers. While we recognize that the applicable regulations do not require the certifying entity to consider all of the factors, we do not believe that Javelin’s First Amended Certification addressed any of these factors with respect to all of the swaps included in its First Amended Certification (particularly with respect to partial-tenor swaps, which generally do not have the same liquidity profile as benchmark swaps). We further note that Javelin’s First Amended Certification claimed that a very wide variety of interest rate swaps are MAT, but Javelin itself has limited operating history and data to support its MAT determination. We were concerned that Javelin’s First Amended Certification captured many interest rate swaps that are not in fact available to trade. As it continues to review MAT submissions from others in the future, we urge the Commission to consider swaps on a swap-by-swap basis, using actual trade data, and to deem only the most liquid swaps as available to trade.

We also support Javelin’s exclusion of package and strategy swaps that include one or more MAT instruments in its Second Amended Certification. Once certain types of swaps are subject to mandatory execution on a SEF, investors potentially will not be able to enter into certain multi-part or linked strategies or packages of swaps where at least one component of the strategy or package includes a MAT swap. It is our understanding that SEFs initially will not have the technology necessary to allow parties to execute simultaneously multi-part swaps where one or more parts are MAT swaps.

We encourage the Commission to permit an exception to the SEF execution requirement by limiting the MAT determination to single standalone transactions only, so that market participants will continue to have the ability to execute multi-part strategies and other packages of swaps that would otherwise include a MAT swap.⁸

Similarly, we urge the Commission to exclude basket swaps from the SEF execution requirement. These customized swaps currently are not traded electronically because of their unique nature, and

⁷ *Keynote Address by Commissioner Scott D. O’Malia, Setting Priorities and Fixing Broken Rules Must be Commission’s First Order of Business in 2014, 9th Annual FIA Asia Derivatives Conference, The St. Regis, Singapore* (Dec. 4, 2013).

⁸ We also note that while a single component of a linked transaction may be liquid, the entire linked transaction, when viewed as a whole, most likely is illiquid and should not be considered available to trade.

declaring broadly-defined categories of swaps as MAT could prohibit market participants from entering into basket swaps where a component of the basket is MAT. Again, this would deprive market participants of a significant source of liquidity and risk management. Javelin's Second Amended Certification does not specifically address basket swaps.

We appreciate the Commission's attention to these comments.

Sincerely yours,

/s/ Christopher A. Klem

Christopher A. Klem

/s/ Leigh R. Fraser

Leigh R. Fraser

/s/ Molly Moore

Molly Moore