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February 13, 2012

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade-76 Fed. Reg. 77728 (December 14, 2011)

Dear Mr. Stawick:

Tradeweb Markets LLC ("Tradeweb") welcomes this opportunity to comment on the regulations which the Commodity Futures Trading Commission (the ***"Commission"*** or ***"CFTC"***) is proposing to establish a process for a designated contract market (***"DCM"***) or swap execution facility (***"SEF"***) to make a swap "available to trade" under Section 2(h)(8) of the Commodity Exchange Act (the ***"CEA"***), which was added to the CEA by Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ***"Dodd-Frank Act"***).[1] We also wish to take this opportunity to commend and thank the Commission and its staff for their hard work and willingness to meet with interested members of the public throughout the rulemaking process.

Since 1998, Tradeweb has offered a regulated electronic trading system for over-the-counter (***"OTC"***) fixed income investors. This system has played an important role in providing greater transparency, improving efficiency, and reducing risk in the trading of fixed income securities and derivatives -- hallmarks of Title VII of the Dodd-Frank Act. Accordingly, Tradeweb is supportive of the Dodd-Frank Act and its stated policy objectives relating to Title VII. With our background and experience in providing regulated electronic markets to OTC market professionals, Tradeweb believes that it can provide the Commission with a unique and valuable perspective on the proposed regulations and the implementation thereof. For these reasons and the reasons set forth more completely in previous comment letters to the Commission, Tradeweb has a significant interest in the proposed regulations which are designed to implement Section 2(h)(8) of the CEA.

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1 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Synopsis of Proposal

Under Section 2(h)(8) of the CEA, any swap that is subject to mandatory clearing must be traded on a SEF or DCM, unless no such platform "makes the swap available to trade."[2] Thus, a swap which must be cleared is exempt from the trade execution requirement only if no SEF or DCM makes it available to trade. A determination that a swap is available to trade therefore has significant implications because it subjects that swap to the trading execution requirement of the Dodd-Frank Act.

Pursuant to the Commission's proposal, a SEF or DCM would be required to submit any determination that a swap is available for trading either for approval or under self-certification procedures under Rule 37.10 or Rule 38.12, respectively, pursuant to the procedures in Part 40 of the CFTC's regulations. In connection with making "available to trade" determinations as well as preparing annual reports, a SEF or DCM would have to consider eight enumerated factors with respect to the swap: (i) whether there are ready and willing buyers and sellers; (ii) the frequency or size of transactions on SEFs, DCMs, or of bilateral transactions; (iii) the trading volume on SEFs or DCMs or of bilateral transactions; (iv) the number and types of market participants; (v) the bid/ask spread; (vi) the usual number of resting firm or indicative bids and offers; (vii) whether a SEF's trading system or platform or a DCM's trading facility will support trading in the swap; or (viii) any other factor that the SEF or DCM may consider relevant. The Commission notes in this regard that "[n]o single factor would be dispositive, as the DCM or SEF may consider any one factor or several factors to make a swap available to trade."[3]

Upon a determination by a SEF or DCM that a swap has been made available to trade, that swap, along with any other "economically equivalent swap," would also be deemed available to trade on all SEFs and DCMs that list or offer such swap for purposes of Section 2(h)(8) of the CEA. However, the proposed rules would not require other SEFs or DCMs to list or offer the swap, or an economically equivalent swap, for trading.[4] For this purpose, an "economically equivalent swap" would be defined in proposed Rules 37.10 and 38.12 as a swap that the SEF or DCM determines to be economically equivalent with another swap "after consideration of each swap's material pricing terms."

Tradeweb's Comments

As noted above, a determination that a swap has been made available to trade has significant implications because it subjects those swaps to the trading execution requirement under the Dodd-Frank Act. In that regard, some market participants and members of the Commission have expressed concern (i) about the Commission permitting SEFs or DCMs to

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2 As noted by the Commission, a swap transaction which is subject to the clearing exception under Section 2(h)(7) of the CEA (referred to as the "end-user exception") is not subject to the trade execution requirement.

3 76 Fed. Reg. 77732. The proposed rules also would require a SEF or DCM to conduct an annual review and assessment of each swap it has made available to trade to determine whether such swap should continue to be available to trade and to submit a report of its review and assessment to the Commission, including any supporting information or data, within 30 days after the facility's fiscal year end.

4 Moreover, the Commission properly makes clear that mere listing or trading of a swap on a SEF or DCM would not mean that the swap is available to trade. Id. at n.47.

exercise any discretion in making available to trade determinations because a platform may be motivated to make such a determination to further its own commercial interest in attempting to capture or build market share and (ii) that the rule review process may not provide the Commission with an adequate opportunity to perform a meaningful oversight role, particularly in the absence of specific mandatory and objective criteria for such determinations. Indeed, the Commission itself has noted that it would not have the ability to make an available to trade determination or to establish objective factors for making such a determination until it gains experience overseeing the swaps market and is able to empirically analyze swap trading data that will only be generated following implementation of the trade execution requirement.[5]

To address the above concerns and to promote smooth implementation of the trade execution requirement as well, Tradeweb recommends that the Commission modify its proposed approach in Rules 37.10(b) and 38.12(b), so that for an initial one-year transition period following implementation of the trade execution requirement there would be a defined group of swaps that are deemed "available to trade," which would give the Commission, as well as SEFs and DCMs, the opportunity to observe the swaps market, analyze swap trading data, and generally gain experience with overseeing these markets, all without disrupting the marketplace as market participants phase into implementation with the rules promulgated under the Dodd-Frank Act. By "freezing" this group, market participants and the Commission will not have to continuously assess and adjust to what a particular SEF or DCM may be making available to trade during the initial phase of the trading mandate.

To that end, we recommend that within thirty or sixty days following the date on which the Commission makes its initial determination on which products are required to be cleared, the Commission take submissions from SEFs and DCMs as to what each would propose to make available to trade, and allow for a thirty-day public comment period to follow. Similar to clearing, the Commission could then review the submissions and determine the group of swaps permitted to be made available to trade during the ensuing one-year transition period – based on the eight factors enumerated by the Commission in its proposal and taking into consideration the comments received. That initial group of swaps would then be fixed as the group of swaps subject to the trading mandate for the twelve month period following implementation of the trade execution requirement.

By way of illustration, within the universe of interest rate swaps that are electronically traded over Tradeweb, which has approximately twenty swap dealers (liquidity providers) and 200 active customers (liquidity takers), approximately 90% of Euro-denominated interest rate swaps and almost 100% of U.S. Dollar-denominated interest rate swaps are categorized as plain vanilla (e.g., spot starting interest rate swaps with standard end dates). On average, dealers quote a price in these instruments in less than 4 seconds. Further, within the universe of credit default index swaps that are electronically traded in the dealer-to-customer space, where dealers are actively streaming prices, CDX accounts for approximately 35 to 40% of trading and iTraxx accounts for approximately 60% to 65% of trading (with investment grade and high yield representing 85% and 15% of the volume, respectively). Almost 100% of electronic trading of credit default index swaps is in the five-year tenor.

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5 76 Fed. Reg. 77731-32.

Therefore, based on the activity we have observed on our platform, we believe that an appropriate starting point for consideration as to what should be deemed made available to trade by a SEF or DCM would be swaps that (i) have been available for trading on an electronic platform and (ii) have been priced by a swap dealer and/or traded on such electronic platform(s) within six months of the effective date of the final "available to trade" rules.[6] Because these types of swaps (e.g., plain vanilla interest rate swaps) are currently accepted for clearing by the DCOs, and are priced and readily traded on electronic platforms, pre-trade transparency with respect to these swaps already exists and these swaps can be most easily integrated into the post-trade reporting regime. Thus, we believe that an "available to trade" determination with respect to swaps like these during the one-year transition period would not be premature or disruptive to the marketplace or to market participants. Additionally, while the examples cited herein are familiar to Tradeweb, they are not the only swaps that Tradeweb currently offers and other swaps traded electronically on other platforms could appropriately be deemed to be "made available to trade" during this one-year transition period.

By implementing this one-year transition period and freezing the universe of swaps made available to trade during that period, the Commission will be in a better position to review and assess a SEF's or DCM's report of what it has made, and intends to make, available to trade following that transition period, based on an application of the eight enumerated factors in the Commission's proposal.[7] More fundamentally, this one-year transition period would permit the Commission to (i) address the concerns it has expressed about its ability to set objective available to trade criteria and (ii) play a more active role in available to trade determinations – in each case without undermining the objectives of the Dodd-Frank Act or the Commission's proposed rules and without disrupting the marketplace or market participants. In this regard, we agree that it is important for the Commission to be involved in this process to prevent any potential abuse of discretion by a SEF or DCM or any inconsistency with the CEA or the Commission's regulations. We note that this approach is generally consistent with the approach that the Commission has taken with respect to implementation of the clearing requirement.[8]

With respect to available to trade determinations that will be effective following the one-year transition period, we recommend that the Commission accept "available to trade" submissions from SEFs and DCMs (each with an ensuing public comment period) during the final three months of the transition period, and then compare that suggested pool of swaps with the data from the swaps data repositories at the end of the one-year transition period. This will provide the Commission with adequate time and the necessary information to compare swaps subject to the trading mandate with those not subject to it. In so doing, the Commission will

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6 This recommendation is consistent with the standard for review of swaps for mandatory clearing under which a derivatives clearing organization ("DCO") is presumed eligible to clear any swap that is within a group, category, type or class of swaps that the DCO already clears. See 76 Fed. Reg. 44464.

7 We also note our view that the Commission should define the phrase "group, category, type or class of swaps" generically (rather than granularly) as including those swaps that have "substantially similar" terms, which would be consistent with the approach recently taken by the Commission in the clearing context. 76 Fed. Reg. 44465 ("A swap generally would be considered to be 'within a group, category, type, or class of swaps that the DCO already clears' if the terms of the swap are substantially similar to the terms of a swap, group, category, type or class of swaps that the DCO already clears...").

8 See 76 Fed Reg. 44464 (July 26, 2011) (Process for Review of Swaps for Mandatory Clearing).

have the appropriate experience and information to consider the swaps submitted for "available to trade" determinations for the following year (or a shorter period if the Commission intends to review the determinations on a more frequent basis). Presumably, by that time, market participants will have adjusted to the implementation of the trading mandate, including the impact of available to trade determinations, and the Commission will be in a position to play a meaningful oversight role in reviewing those determinations.

Comments Requested

In addition to the recommendations set forth above, we have the following specific comments in response to the Commission's requests.

We share those concerns that have been expressed regarding SEFs and DCMs that could make available to trade determinations regarding a swap that is not currently offered on their platforms because we believe that those SEFs and DCMs with experience in the trading of a particular swap or class of swaps will be more informed in evaluating when a swap has been made available to trade. Accordingly, we do not support allowing a SEF or DCM to submit an available to trade determination if that SEF or DCM does not itself offer the subject swap for trading. Otherwise, a SEF or DCM with little or no experience or familiarity with trading in a particular swap could make an available to trade determination that would have market-wide consequences under the Commission's proposal.

Tradeweb also believes that when a SEF or DCM makes a swap available to trade, that swap, along with any other "economically equivalent swap," would also be deemed available to trade on all SEFs and DCMs that list or offer such swap. In this regard, this requirement is necessary to ensure market-wide compliance with the trade execution requirement, a core provision of Title VII of the Dodd-Frank Act. However, as the Commission notes, no SEF or DCM should, as a result of an available to trade determination with respect to a swap, be required to offer that swap and/or an economically equivalent swap for trading.

Further, while we agree generally with the Commission's proposal regarding the treatment of economically equivalent swaps, we seek more clarity on the definition of and the standards by which swaps will be judged as economically equivalent. *It will be extremely important to have clarity about what is economically equivalent because of the risk that a swap which is economically equivalent will not be categorized as such and thus would fall outside of the trade execution requirement when it should appropriately fall within it.*

Finally, we agree with the Commission's proposal that SEFs and DCMs conduct annual reviews and assessments of swaps made available to trade using the eight enumerated factors for consideration by the Commission. However, we would like the Commission to clarify further the impact of the proposed annual review process. For example, assuming that these annual reviews by SEFs and DCMs (and the Commission's consideration of them) would have a market-wide impact (i.e., a decision could be made to remove a swap's "made available to trade" designation), we believe that there should be a public comment period to allow other SEFs, DCMs, market participants, and interested persons to comment on any determinations that will be made with respect to the swaps that are the subject of these annual reviews.

Conclusion

In summary, Tradeweb believes that appropriate implementation of the available to trade determination under Section 2(h)(8) of the CEA is crucial to achieving the objectives of Title VII of the Dodd-Frank Act, in particular promoting the trading of swaps on SEFs in a manner that is not disruptive to the marketplace or to market participants during the transition to the new regulatory regime. Consistent with that view, Tradeweb believes there should be a one-year transition period during which a defined group of swaps are deemed "available to trade". This one-year transition period should be followed by a review by the Commission with respect to future available to trade determinations.

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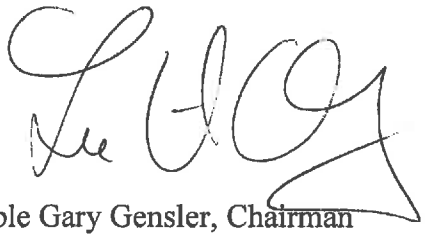
If you have any questions concerning this letter, please feel free to contact us. We welcome the opportunity to discuss these issues further with the Commission and its staff.

Respectfully submitted,

Lee Olesky  Douglas Friedman 

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
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