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Comments of SunGard Kiodex LLC re:
Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade
17 CFR Parts 37, 38; RIN 3038–AD18

By Electronic Submission

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20518

February 13, 2012

Dear Mr. Stawick:

SunGard Kiodex, LLC appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the "**Commission**") in response to the Commission's proposed rule on the Process for a Designated Contract Market ("**DCM**") or Swap Execution Facility ("**SEF**") to Make a Swap Available to Trade (the "**Proposed Rule**").

Overview

One of the principal goals of Dodd Frank is to improve pre-trade transparency in the swaps markets via mandatory clearing and electronic trading of commonly traded swaps. The Commission established a rigorous process to determine which swaps will be subject to mandatory clearing in rule 39.5. That process should adequately assess the average or typical liquidity of swaps that become subject to mandatory clearing and give market participants time to prepare to trade these swaps on a DCM or SEF. Nevertheless, under the Proposed Rule, the Commission would implement an additional formal review process taking up to 90 days, which applies to swaps that have already been subjected to the review process for mandatory clearing. We believe this to be redundant and possibly counterproductive and suggest that the Commission replace that process in its final rule (or a re-proposed rule if warranted) with real-time illiquidity tests which, if met, would qualify the market participant for the "not made available to trade" exception on a temporary basis, as outlined herein.

Impact of Proposed Rule

The Proposed Rule presumes that the condition "no board of trade or SEF makes the swap available to trade" requires specific action by SEFs and DCMs. This is accomplished through an *a priori* assessment of liquidity, using a set of eight specified factors to be evaluated by SEFs and DCMs, and approved by the Commission, with the objective being that market participants would know, at any point in time, with respect to swaps subject to mandatory clearing:

- which of those swaps they may continue to execute off-facility under the exception provided in the statute;
- which of those swaps must be executed on a SEF and DCM; and
- which SEFs and DCMs may be used to satisfy this requirement.

While this seems like a good outcome to seek, the process is flawed:

- Pre-trade transparency for swaps which are made subject to mandatory clearing will be unnecessarily delayed for the further review process;
- Uncertainty during this delay may disrupt the existing market in the affected swaps, driving them offshore or discouraging hedging activity;
- The *a priori* designation of a swap as "made available to trade" by a SEF or DCM does not guarantee liquidity in that swap when the market participant needs to trade;
- Swaps may move on or off of the "made available for trade" list as a result of periodic reviews, negating the benefit of having such designations;
- The process is clouded by the application of its results to swaps that are "economically equivalent" to the swap that was reviewed.

Alternative Proposal

Obviously, a swap is not made available for trade on a SEF or DCM if none of them list the swap for trading. That is highly unlikely for commonly traded swaps that meet all the requirements for mandatory clearing. SEFs and DCMs will want to maximize revenues from execution and clearing by listing any swap that they are comfortable with from a risk perspective, as required in their core principles. Rather than requiring SEFs and DCMs to maintain a list of swaps designated as "made available to trade", SEFs and DCMs should simply be required to:

- indicate in trading screens and reports which contracts that they list that are subject to mandatory clearing and execution on a SEF or DCM; and
- disclose in their rules and public website what is required for participants to claim the available exceptions.

As in the current proposal, more is required than simply observing whether contracts are listed on a DCM or SEF. We propose that the basis for a swap participant to claim the "not made available to trade" exception should be comprised of concrete, observable, "real-time" tests for illiquidity in a swap listed on a SEF or DCM. If met, such illiquidity tests would temporarily permit off-facility trading in the swap, but would not excuse the participant from mandatory clearing requirements. Examples of such tests for pockets of illiquidity include:

- an RFQ system fails to deliver the requisite number of quotes within a reasonable time period
- an order book system has not printed an execution within a reasonable time period
- bid/offer spreads that are unusually wide

Should the Commission find merit in this approach, we suggest that other interested parties be invited to propose similar measures that might be used, and to comment on what a "reasonable time" would be for each asset class.

In Conclusion

Allowing some off-facility trading of swaps subject to mandatory clearing may seem counterproductive to the goal of pre-trade transparency; however, we believe this is necessary to ease the fears of some market participants that they could be shut out of the market, or forced to "pay-up", at precisely the time when they need to execute a trade. We see the primary advantages of this real-time test:

- Is based on observable data rather than subjective assessments.
- Achieves the regulatory purpose sooner while reducing costs for all stakeholders.
- Provides a safe harbor for off-facility execution when on-facility markets are illiquid.

Respectfully,

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