

**MEMO# 27852**

January 22, 2014

## **CFTC Certifies SEF's "Made Available to Trade" Submission**

[27852]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 4-14  
INVESTMENT ADVISER MEMBERS No. 2-14 RE: CFTC CERTIFIES SEF'S "MADE AVAILABLE TO TRADE" SUBMISSION

The Commodity Futures Trading Commission ("CFTC") announced the certification of the first "made available-to-trade" or "MAT" determination for certain interest rate swap contracts. [\[1\]](#) The submission was filed by the swap execution facility ("SEF"), Javelin SEF LLC. These swaps that are subject to the MAT determination, whether listed or offered by Javelin or any other designated contract market ("DCM") or SEF, will become subject to the trade execution requirement on February 15, 2014. All transactions involving swaps that are subject to the trade execution requirement must be executed through a DCM or SEF and can no longer be executed bilaterally.

The CFTC and the Division of Market Oversight ("Division") also noted that market participants have raised concerns regarding the implementation of the trade execution requirement with respect to transactions involving more than one swap or financial instrument and at least one swap that is subject to the trade execution requirement ("package transactions"). The CFTC and the Division clarified that the inclusion of a swap subject to the trade execution requirement in a multi-legged transaction would not per se relieve market participants of the obligation to trade such swap through a DCM or SEF. Acting Chairman Wetjen has directed, however, the Division to hold a public roundtable on execution issues related to package transactions. Based upon public input, the Division will consider whether and under what conditions to grant limited relief for package transactions to ensure proper implementation of the execution mandate.

Commissioner O'Malia made a separate statement expressing concern about the MAT determination with respect to the package transactions. [\[2\]](#) He noted, among other things, that the CFTC's decision to certify the interest rate swaps and related package transactions for mandatory trading while considering future action for all package transactions creates uncertainty in the market. He found the CFTC's approach troubling given that the package transactions comprise 50 percent of the notional volume of the rates market. He also stated that there have been questions raised regarding whether the CFTC has legal

authority over swap spreads that are composed of a product that is subject to the authority of the Securities and Exchange Commission.

Jennifer S. Choi  
Senior Associate Counsel Securities Regulation

**endnotes**

[1] Press Release: The Commodity Futures Trading Commission Staff Announces Trade Execution Mandate for Certain Interest Rate Swaps – Javelin SEF, LLC’s Available-to-Trade Determinations Are Deemed Certified, January 16, 2014, available at <http://www.cftc.gov/PressRoom/PressReleases/pr6831-14>. The swaps subject to the trade execution requirement are described in a chart in the CFTC’s Press Release.

[2] Statement of Commissioner Scott D. O’Malia on Made Available-to-Trade Determination, January 16, 2014, available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement011614>.

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