

MEMO# 27667

October 31, 2013

SEFs File "Made Available to Trade" Submissions

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TO: SECURITIES OPERATIONS ADVISORY GROUP RE: SEFS FILE "MADE AVAILABLE TO TRADE" SUBMISSIONS

Recently, three swap execution facilities ("SEFs") have filed "made available to trade" ("MAT") submissions to the Commodity Futures Trading Commission ("CFTC") for certain interest rate swaps and credit default swaps. [\[1\]](#) If the CFTC certifies these swaps contracts, such swap contracts will be subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act ("CEA"). [\[2\]](#) All transactions involving swaps that are subject to the trade execution requirement generally must be executed on either a designated contract market ("DCM") or a SEF. In other words, swaps for which a MAT determination has been made can no longer be executed bilaterally. Moreover, once a MAT determination is made, all other SEFs and DCMs, if they list that particular swap, must comply with the trade execution requirements of the CEA with respect to the swap.

In making its MAT submission, the DCM or SEF must further consider one or more of the following factors with respect to the swap: (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. The Commission has stated that "satisfying any one of the determination factors would sufficiently indicate that the contract is available to trade."

If you have concerns about these submissions and would like ICI to comment, please contact us as soon as possible.

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endnotes

[\[1\]](#) See Javelin SEF, LLC's MAT submission is available at

<http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/javelinsefsub1306.pdf> (comment due on November 19); trueEX LLC's MAT submission is available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/trueexsub201314mat.pdf> (comment due on November 21); and TW SEF LLC's MAT submission is available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/corpg5twmatdeter101813.pdf> (comment due on November 29).

[2] The Division of Market Oversight, under delegated authority from the CFTC, has stayed these submissions, pursuant to Commission regulations 40.6(c) and 40.7(a)(2)(iii), to provide the CFTC with additional time to analyze the submissions in light of the novel or complex issues related to the available-to-trade determinations. The CFTC has 90 days to review the submissions. The MAT determinations would become effective at the expiration of the 90-day review period unless the CFTC withdraws the stay prior to that time, or notifies the SEFs that the determinations are inconsistent with the CEA or the CFTC's rules.

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