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April 4, 2011

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Registration and Regulation of Security-Based Swap Execution Facilities – File Number S7–06–11

Dear Ms. Murphy:

Markit[1] is pleased to submit the following comments to the Securities and Exchange Commission ("***SEC***" or the "***Commission***") on the proposed rulemaking to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***")[2] titled Registration and Regulation of Security-Based Swap Execution Facilities (the "***Proposed Rule***").[3]

Introduction

Markit views its role in the global derivatives markets as a service provider, offering independent data, valuations and related services for swaps and security-based swaps ("***SB swaps***") across many regions and asset classes in order to reduce risk and improve operational efficiency in these markets. As such, Markit supports the Commission's objectives of increasing efficiency in the OTC derivatives markets, detecting any abuse or manipulation, and of reducing both systemic and counterparty risk.

Executive Summary

Markit believes that: (i) the determination that a SB swap is made "available to trade" should be based on various price and nonprice factors, should be made individually not only for each product but also with respect to its different maturities, should be made frequently, and should be performed on an aggregate basis; (ii) the Commission should determine whether SB swaps are "available to trade" by following a process similar to that established under the DFA for Commission determination of what SB swaps should be required to be cleared; (iii) swap review committees should be required to determine which SB swaps should be traded on the security-based swap execution facility ("***SB SEF***") at least quarterly and should revisit those determinations ad hoc during periods of market volatility; (iv) SB SEFs should not be permitted to disseminate any data element of SB swap transactions before it is disseminated by a security-based swap data repository ("***SB SDR***"); and (v) when SB SEFs make SB swap transaction data available to parties other than the original counterparties of the transaction, they should be required to make such data available to all *market* participants on fair and reasonable terms.

[1] Markit is a financial information services company with over 2,000 employees in North America, Europe and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).
[3] Registration and Regulation of Security-Based Swap Execution Facilities, 76 Fed. Reg. 10948 (proposed Feb. 28, 2011).

Comments

1. **The Determination That a SB Swap is "Available to Trade" Should be Based on Various Factors, Should Differentiate Between Maturities, and Should be Updated Frequently.**

We believe that the Commission correctly chose not to establish the criteria for when a SB swap is "available to trade" until it has sufficient data, as explained in the preamble to the Proposed Rule.[4] We also agree that the term "made available to trade" means "something more than the decision to simply trade, or essentially list, a SB swap on a SB SEF or an exchange."[5] Otherwise, SB SEFs would have effective control over which SB swaps are subject to the mandatory execution requirement simply by listing a SB swap on their platforms.

In response to the Commission's request for comment on the appropriate method or standards to determine whether a SB swap should be made available to trade,[6] we believe that this determination must be based on various factors, should be sufficiently granular, and must be frequently revisited, as detailed below.

(a) *Liquidity Factors*

We believe that the determination of whether a SB swap is "available to trade" is similar to the measurement of its liquidity, which must be based on several considerations in order to be accurate. We also believe that a determination that an instrument is "available to trade" is important, as, when significant liquidity is not truly present, it can actually result in reducing liquidity in that SB swap.

As a provider of Liquidity Scores[7] for a variety of cash and derivative products, we have considerable experience making these types of liquidity determinations. We have found that it is difficult to measure liquidity for products such as SB swaps that trade mainly over-the-counter ("***OTC***"). As most individual SB swap instruments trade only infrequently, the traditional approach of using only observed trading volumes to gauge liquidity fails to produce meaningful results. One would therefore aim to measure their "prospective liquidity"[8] instead.

Measurement of the liquidity of SB swaps should involve the compilation of multiple inputs and can be complicated. However, reasonably accurate gauges of liquidity can be derived from a combination of observable factors such as trade frequency and average transaction size, while its accuracy can be significantly increased through the inclusion of factors such as bid/offer spreads, the agreement on the price, the number of market makers, and others. We urge the Commission to take all of these relevant factors into consideration when making a determination of whether a SB swap is "available to trade".

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[4] *See id.* at 10969.
[5] *See id.*
[6] *See id.* at 10970 ("What would be an appropriate method or standards to determine whether a SB swap should be made available for trading?"). Regarding the factors that should be considered, we note that the DFA states that the SEC may promulgate rules "defining the universe of swaps that can be executed on a [SEF]" taking into account "the price and nonprice requirements of the counterparties. . . ." *See* DFA § 733, 124 Stat. at 1712 (adding Commodity Exchange Act ("***CEA***") Section 5h(d)(1)). DFA Section 733 is applicable both to the Commodity Futures Exchange Commission and the SEC.
[7] Markit provides liquidity measures ("Liquidity Scores"), based on a number of relevant inputs, for a variety of SB swaps, bonds, loans, and structured finance instruments.
[8] *See* Technical Committee of the International Organization of Securities Commissions, Pub. No. FR03/11, Report on Trading of OTC Derivatives 26, *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD345.pdf (last visiting April 4, 2011) ("To determine the type of organised platform upon which the trading of an OTC derivatives product would be feasible, prospective liquidity should be explored.").

(b) *Differentiation between Maturities*

We believe that a separate "available to trade" determination should be required for different maturities of each type of SB swap.

SB swaps with different maturities can have very different liquidity characteristics even if they reference the same underlying asset. For example, the liquidity of the "benchmark" maturity of a SB swap will differ from that of other maturities of the same product, often significantly so.[9] For example, if a determination is made that a "standard" single-name CDS swap is "available to trade" because the 5 year maturity is highly liquid, all maturities of single-name CDS swaps should not automatically be deemed "available to trade" and therefore required to be traded on SB SEFs. This would likely result in significantly reducing liquidity for the less common maturities and would compromise efforts to develop a market for them.[10]

(c) *Frequency of Determination*

We recommend that determinations as to which SB swaps are "available to trade" be conducted frequently in order to ensure that execution requirements track market developments and events. Liquidity of SB swaps can experience significant changes over time and can dry up completely in some circumstances. Therefore, we believe that these decisions: (i) should be made more frequently than annually; (ii) should be revisited and reconsidered at the same frequency; and (iii) should also be revisited on an *ad hoc* basis in periods of volatility or unexpected events.

(d) *Scope of the Market – Determination in the Aggregate*

In response to the Commission's request for comment,[11] we believe that an "available to trade" test must be based on the aggregate amount of trading on SB SEFs, exchanges, and in the OTC market. A SB swap might be traded on a number of different SB SEFs with a small number of participants trading on each one of them. While trading activity might represent sufficient liquidity on an aggregate level, this might not be reflected in the analysis performed by individual SB SEFs. We therefore believe that the best way to approach the "available to trade" decision is for the Commission to perform an analysis on an aggregate level that takes additional factors into account, and then determine whether a SB swap is "available to trade" based on the data specific to this SB swap. It is for related reasons that we believe the Commission should foster fungibility and interconnectivity between SB SEFs and other market participants.

2. Determinations That SB Swaps are "Available to Trade" Should be Made According to a Procedure Similar to That of a Determination That a SB Swap is Subject to Mandatory Clearing.

The DFA provides detailed procedures for the Commission to follow in determining what contracts should be required to be cleared,[12] but does not describe the process for the Commission to determine whether a SB swap is "available to trade". Instead, the DFA only states that "[t]he Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements

[9] An extreme example is the fact that any SB swap, no matter how actively traded, will only ever be liquid or "available to trade" out to a certain maturity, *i.e.*, will not see any activity beyond a maturity of x years.
[10] Depending on liquidity of the SB swap across all available maturities this could for example result in a specific SB swap being determined to be "available to trade" for the maturities between 1 and 10 years (maturity bucket), or for the maturities up to 7 years (maturity cut-off). Such determinations would recognize the lack of liquidity for maturities outside this bucket or beyond the maximum maturity respectively.
[11] *See* Proposed Rule, 76 Fed. Reg. at 10970 ("Should the test be based on the aggregate amount of trading in the SB swap on exchanges and SB SEFs and in the OTC market, or on overall volume, wherever the SB swap may be executed?").
[12] *See* DFA § 763(a), 124 Stat. at 1762-63 (adding Securities Exchange Act of 1934 (the "***Exchange Act***") Section 3C(b)).

of the counterparties to a swap and the goal of this section as set forth in subsection (e) [*i.e.*, promotion of trading of swaps on SEFs and pre-trade price transparency]."[13]

We believe it would be beneficial for the Commission to adopt similar procedures in connection with the determination of "available for trading" as those procedures set forth in the DFA regarding the determination that a SB swap is subject to mandatory clearing. Specifically, we believe that: (1) mandatory cleared SB swaps that are currently traded on SB SEFs should be deemed submitted to the Commission for designation approval; (2) SB SEFs should submit to the Commission each mandatory cleared SB swap, or any group, category, type, or class of SB swap that they plan to list for trading; (3) the Commission shall review such submissions, taking into account the price and nonprice requirements of the counterparties (*e.g.*, liquidity in the market and other factors outlined above in this Letter); and (4) the Commission shall provide at least a 30-day public comment period regarding its determination as to whether each SB swap, or any group, category, type, or class of SB swap should be designated by the SEF as "made available for trading".

We believe that this procedure will ensure an orderly and consistent application of designation principles and will take into account all relevant factors for various types of SB swaps.

3. Swap Review Committees Should Frequently Analyze Whether SB Swaps Should Be Moved to Another Platform.

Proposed Rule 812 would require each SB SEF to establish a swap review committee which, among other things, would determine which SB swaps will trade on the SB SEF and what mechanism is best suited for executing specific SB swaps on the SB SEF.[14] We believe that swap review committees should make this determination based on a SB swap's liquidity and suitability for transparency. We support the proposed requirement for a SB SEF's swap review committee to review each SB swap that is traded on the SB SEF to determine whether such SB swap should be traded on another platform on at least a quarterly basis.[15] As the contract maturities of most SB swaps such as credit default swaps ("***CDS***") or credit indices become "off-the-run" on a quarterly basis, SB SEFs should revisit and revise SB swaps that are listed for trading on their platforms at least that frequently. Additionally, however, we believe that the Commission should encourage swap review committees to also review these determinations on an *ad hoc* basis to take specific market situations into account.

4. The Commission Correctly Prohibits SB SEFs from Disseminating SB Swap Data Ahead of SB SDRs.

Proposed Rule 817 requires SB SEFs to have the capacity to capture, transmit, and disseminate SB swap data, but also prohibits SB SEFs from making any SB swap data publicly available prior to the time that a SB SDR is permitted to publicly disseminate that data.[16] We believe that the Commission correctly proposed other rules that would make SB SDRs, not SB SEFs, the central source for publicly disseminated SB swap data, and we note that the Commission expressed a preference for data to be consolidated into one or a few SB SDRs in Regulation SBSR.[17] On that basis we believe that if SB SEFs were permitted to disseminate any data elements of an SB swap transaction ahead of its public dissemination by a SB SDR, confusion and data fragmentation would inevitably result, which would ultimately undermine the goal of increased public transparency. We believe that Proposed Rule 817(c) satisfies this concern by prohibiting SB SEFs from

[13] DFA § 733, 124 Stat. at 1712 (adding CEA Section 5h(d)(1)).
[14] *See* Proposed Rule, 76 Fed. Reg. at 11061 (to be codified at 17 C.F.R. § 242.811(c)(4)).
[15] *See id.* at 11061 (to be codified at 17 C.F.R. § 242.811(c)(4)).
[16] *See id.* at 11063 (to be codified at 17 C.F.R. § 242.817).
[17] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule, 75 Fed. Reg. 75208, 75227 (proposed Dec. 2, 2010) (discussing the advantages to consolidated data reporting from one SB SDR and the complications caused by multiple SB SDRs potentially reporting data regarding SB swaps in the same asset class).

disseminating information ahead of SB SDRs, and therefore request that the Commission codify Proposed Rule 817(c) in its final rule.

5. SB Swap Data Disseminated by SB SEFs Should be Made Available to All Market Participants, Not Just to the SB SEF's Participants.

Proposed Rule 817 would require SB SEFs that make SB swap data available to any parties other than the counterparties to also make that information available to "all participants" on terms that are fair, reasonable, and not unfairly discriminatory.[18] We believe that, even if SB SEFs are not permitted to distribute any transaction data before it can be disseminated publicly by SB SDRs, technological or latency factors could easily provide the recipients of data distributed by SB SEFs with an advantage compared to those that receive the same information from SB SDRs. In order to fulfill the Commission's stated goal of ensuring a "level playing field for all market participants,"[19] we therefore believe that this rule should require SB SEFs to make the SB swap data that they disseminate to non-counterparties available on a non-delayed basis to all *market* participants, including data vendors, not merely to all participants of the SB SEF. Such provision seems only fair as it would mirror the requirements that the Commission imposed on real-time disseminating SB SDRs[20], and we believe that as long as SB SEFs are permitted to set terms for accessing this data, there is no reason why all market participants should not have access. Also, requiring SB SEFs to disseminate such information broadly would increase competition and transparency on a market level, not just at the individual SB SEF level.

Therefore, we request the Commission to clarify that Proposed Rule 817(b) requires SB SEFs to make available to all market participants any SB swap data that they provide to non-counterparties, and that they must do so on fair, reasonable, and not unfairly discriminatory terms.

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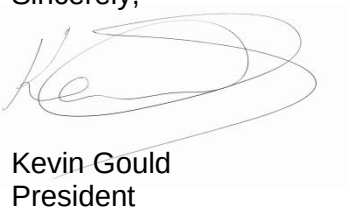
We appreciate the opportunity to provide these comments on this proposed regulation.

We thank the Commission for considering our comments. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Sincerely,



Kevin Gould
President
Markit North America, Inc.

[18] *See* Proposed Rule, 76 Fed. Reg. at 11063 (to be codified at 17 C.F.R. § 242.817(b)).
[19] *See id.* at 10981.
[20] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, Proposed Rule, 75 Fed. Reg. 77306, 77320 (proposed Dec. 10, 2010) ("Such dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly situated users of the SDR's services, including, but not limited to, market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the SDR (including exchanges, SB SEFs, electronic trading venues, and matching and confirmation platforms), and third party service providers.").