MarketAxess [redacted]

April 9, 2021

Division of Investment Management
Securities and Exchange Commission
*Submitted Electronically (to IM-Rules@sec.gov)*

***Re: Staff Statement on Investment Company Cross Trading***

Dear Staff of the Division of Investment Management:

MarketAxess Holdings Inc.[1] ("MarketAxess") appreciates the opportunity to provide the Staff of the Securities and Exchange Commission (the "Commission") with its comments regarding investment company cross trading and rule 17a-7 under the Investment Company Act of 1940. We are supportive of the Staff's efforts to enhance the regulatory regime governing investment company cross trading. Funds' trading practices have evolved over the last several decades with the advent and evolution of electronic trading platforms for fixed income securities. In light of the wide use of such platforms by investment advisers as an important tool for obtaining best execution, we believe it is now necessary to modernize rule 17a-7 to allow advisers to more easily use electronic trading platforms for cross trading.

Although electronic trading platforms did not exist when rule 17a-7 was adopted in 1966, they are now widely used by advisers. In addition, many advisers need a third party to execute cross trades for operational purposes and, as we have seen on our European platforms, investment firms will use an electronic trading platform to provide a cost-effective method of settling cross trades. Trading platforms also provide a complete audit trail that make it easier for the adviser and fund board of directors to exercise their cross trade oversight responsibilities.

Our comments herein will largely echo the recommendations of the Technology and Electronic Trading Subcommittee ("Subcommittee") of the Fixed Income Market Structure Advisory Committee ("FIMSAC") regarding the modernization of rule 17a-7 that were approved on June 1, 2020[2]. As discussed in the FIMSAC recommendation, our U.S. investment adviser clients face two main hurdles under rule 17a-7 when considering a cross trade on the MarketAxess platform. It is worth noting that our European investment advisor clients, on the other hand, are not subject to rule 17a-7 and are broadly able to use our crossing functionality on our European platforms.

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[1] MarketAxess operates the leading, institutional electronic trading platform for corporate bonds. More than 1,800 firms - comprising the world's leading asset managers and institutional broker-dealers - traded a record $2.6 trillion of U.S. investment-grade bonds, U.S. high yield bonds, emerging market debt, Eurobonds and other fixed income securities through MarketAxess' patented trading technology in 2020. MarketAxess' award-winning Open Trading™ marketplace is regarded as the preferred all-to-all trading solution in the global credit markets, creating a unique liquidity pool for the broad range of credit market participants.

[2] Rick McVey, Chief Executive Officer of MarketAxess, was the Chair of the Subcommittee.

First, rule 17a-7 states that no brokerage commission or fee or other remuneration can be paid for a cross trade except for "customary transfer fees". There is no definition of "customary transfer fees" in rule 17a-7 and very little guidance that can be applied to the fees associated with the use of electronic trading platforms or dealers for cross trades. As a result, our investment advisor clients are unsure whether any fees charged by MarketAxess to affect a cross trade for an asset manager client would be considered a "customary transfer fee". MarketAxess would have costs associated with settling and clearing each cross trade for an advisor, as well as for maintaining the crossing functionality, and, as such, we believe that the prohibition on brokerage fees for electronic trading platforms or dealers should be eliminated.

Second, rule 17a-7 requires that a fixed-income security be executed at the "independent current market price" and then defines that term in part as "the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry". Obtaining multiple bids and offers for fixed income securities is difficult to impossible in most circumstances considering that only 17% of the over 43,000 unique U.S. investment grade bonds traded on any given day in 2020. We understand that dealers are increasingly unwilling to provide bids and offers when they believe such pricing is requested solely in support of an internal cross, as well as due to their concerns over providing quotes that are used by others for purposes other than trading.

In order to make internal crossing more feasible, we believe that the Commission should allow other methods of ensuring that a fair price is obtained in cross trades involving fixed income securities (beyond obtaining multiple bids and offers). In particular, we believe that the "independent current market price" standard should be considered to be met if an adviser uses an electronic trading platform that has functionality designed to achieve fair pricing of cross trades or an independent pricing source[3] to establish the fair value of the cross trade, provided that the adviser is not relieved of its fiduciary duty and obligation to achieve best execution for both clients and the adviser can establish and maintain any required oversight policies and procedures.

MarketAxess uses two types of crossing functionalities that are not made available to any of our investment adviser clients that are trading on behalf of funds registered under the Investment Company Act of 1940 due to the pricing requirements of rule 17a-7. First, we incorporate independent third party and proprietary pricing services into crossing protocols that are designed to cross the trade at an estimated mid-price. The mid-price is not provided to MarketAxess by the adviser and therefore represents an independent and objective price that favors neither the buying or selling account. Advisers and participating funds would be able to adopt policies and procedures to ensure that any pricing service is, and remains, an appropriate and independent pricing source.

Second, MarketAxess has developed a competitive RFQ process whereby an adviser can initiate a bid wanted in competition ("BWIC") or an offer wanted in competition ("OWIC") on behalf of one fund and simultaneously respond to the request on behalf of the second fund with which the adviser wants to cross the bond. Given that the MarketAxess system offers an "all-to-all" trading

[3] Such sources may include regulatory trade reports (e.g., TRACE, EMMA), aggregated dealer runs, electronic trading venue data services or other widely-used independent pricing services available to the adviser.

protocol, each BWIC or OWIC can be exposed to hundreds of market participants. In the case of a BWIC, for example, in the event that the adviser's bid is the high bid, the adviser may successfully bid back the bond. In the event that the adviser's bid is not the highest (or if there is less than the prescribed number of independent bids[4]), the bond will be sold to the highest independent bidder. Due to the competitiveness of the RFQ process and the requirement that the adviser must enter the bid or offer, as applicable, on a blind basis (without the benefit of seeing the prices of other participants), it is easier for advisers to obtain best execution for both clients.

As with pricing services, we believe that advisers and participating funds can adopt policies and procedures for the selection and use of electronic trading platforms which help ensure that best execution is being achieved for both clients. Such policies and procedures can include periodic best execution evaluations for each platform, fund board of director oversight, and independence requirements for any participating platform.

MarketAxess appreciates the opportunity to provide feedback to the Staff on rule 17a-7. We would be pleased to provide any further information and respond to any questions you may have.

Sincerely,

Scott Pintoff
General Counsel

[4] Technological safeguards could include preventing the cross trade unless there are at least two other unaffiliated bids and the adviser's bid provides better execution for the offer than the two unaffiliated bids.